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• By the Students • Of the Students • For the Students

HUMAN RIGHTS

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HUMAN RIGHTS

Q. Discuss the origin and development of human rights.

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all human individuals by virtue of their humanity alone. These claims are articulated and formulated in what we today call human rights, and have been translated into legal rights, established according to the law-creating processes of societies, both national and international. The basis of these legal rights is the consent of the governed that is the consent of the subjects of the rights.

Universally Accepted Notion: The values of dignity and equality of all members of the human race, like many other basic principles which underlie what we today call human rights, can be found in virtually every culture and civilization, religion and philosophical tradition.

Reflection of Value of Human Rights in Practice: Human life and human dignity have been disregarded throughout history and continues to be disregarded today. Nevertheless, the idea of rules common to all citizens dates back many centuries. What has been called 'natural law' implies the concept of a body of rules which ought to prevail in society. The principle of equality in rights, recognized in natural law, was long accepted in many societies. Yet discrimination continues to exist due to ignorance, prejudice and fallacious doctrines which try to justify inequality. Such doctrines have been used to defend slavery and discrimination on the grounds of sex, race, colour, descent, national or ethnic origin or religious belief, or on the basis of class or caste systems, throughout history and, unfortunately in modern times.

Development of the Idea of Human Rights Protection: The ideas of elaboration and protection of rights of human beings have been gradually transformed into written norms. Many important landmarks may be mentioned on this way, such as, in England Magna Carta (1215), the Petition of Right (1628) and the Bill of Rights (1689). During the eighteenth century, the early ideas of natural law developed into an acceptance of natural rights as legal rights, and these rights for the first time were written into national constitutions, thus reflecting an almost contractual relationship between the State and the individual which emphasized that the power of the State derived from the assent of the free individual. The French Declaration of the Rights of Man and of the Citizen of 1789 and the American Bill of Rights of 1791 were based on this premise. During the nineteenth century this principle was adopted by a number of independent States and social and economic rights also began to be recognized. Despite the recognition accorded to human rights in national constitutions, these rights were sometimes curtailed or eliminated by legislation or by arbitrary means and, perhaps generally, by informal social mechanisms. Moreover, human rights, in spite of their status as legal rights, were often violated by States themselves.

Recognition of the need to Internationalize Human Rights Protection: The first international treaties concerning human rights were linked with the acceptance of freedom of religion (e.g. the Treaties of Westphalia of 1648) and the abolition of slavery. Slavery had already been condemned by the Congress of Vienna in 1815 and a number of international treaties on the abolition of slavery appeared in the second half of the nineteenth century (e.g. the Treaty of Washington of 1862, documents of the Conferences in Brussels in 1867 and 1890 and in Berlin in 1885). Another field of international co-operation was the elaboration of the laws of war (e.g. the Declaration of Paris of 1856, the First Geneva Convention of 1864 and the Second of 1906 and the Hague Conventions of 1899 and 1907). The creation of the International Committee of the Red Cross (ICRC) in 1864 contributed greatly to these developments.

Since the end of the First World War, there has been a growing belief that governments alone cannot safeguard human rights, which require international guarantees. Though the mandate of the League of Nations, the first universal intergovernmental organization created after the First World War, did not mention human rights, the League tried to undertake the protection of human rights through international means. However, its concerns were limited mainly to the establishment of certain conditions for the protection of minorities in a few countries.

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The standards determining the conditions of industrial workers established in the beginning of the twentieth century became the subject of further international agreements elaborated by the International Labour Organization (ILO), created in 1919. The International Slavery Convention, signed in Geneva on 25 September 1926, ended lengthy efforts aimed at the abolition of slavery. Relevant conventions for the protection of refugees were adopted in 1933 and 1938. However, despite all these developments, human rights Saw did not emerge in the inter-war period.

The totalitarian regimes established in the 1920s and 1930s grossly violated human rights in their own territories. The Second World War brought about massive abuse of human life and dignity, and attempts to eliminate entire groups of people because of their race, religion or nationality. Thus, it became clear that international l instruments were needed to codify and protect human rights, because respect for them was one of the essential conditions for world peace and progress.

Achieving Human Rights in Practice: This conviction was reflected in and reinforced by the Charter of the United Nations signed on 26 June 1945. The Charter states the fundamental objective of the universal organization, namely: 'to save succeeding generations from the scourge of war' and 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women'. Article I of the Charter states that one of the aims of the United Nations is to achieve international co-operation in 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion', thus enshrining the principle of nondiscrimination. Article 55 expresses a similar aim, and by Article 56 all members of the United Nations 'pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55'.

The provisions of the Charter have the force of positive international law because the Charter is a treaty and therefore a legally binding document. All United Nations Member States must fulfill in good faith the obligations they have assumed under the Charter of the United Nations, including the obligations to promote respect for human rights, to promote observance of human rights, and to co-operate with the United Nations and other nations to attain this aim. However, the Charter does not specify human rights and does not establish any specific mechanism to ensure their implementation in Member States.

Creation of Human Rights Law: The task of drawing up an International Bill of Human Rights, defining the human rights and freedoms referred to in the Charter, was charged upon the Commission on Human Rights, and established in 1945, which is a subsidiary body of the Economic and Social Council (ECOSOC), one of the United Nations principal organs. A major step in drafting the International Bill of Human rights was realized on 10 December 1948, when the General Assembly adopted the Universal Declaration of Human Rights 'as a common standard of achievement for all peoples and nations.

Q. Discuss the concept of Human Rights. with special reference to the National and International rights.

Meaning: Human beings are rational beings. They by virtue of their being human possess certain basic, inherent and inalienable rights which are commonly known as human rights. Human Rights are defined as all those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent. Human rights become operative with the birth of an individual. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. Because of their immense significance to human beings; human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. They are not created by any legislature through legislation and are not subject to amendment.

Definition

Dr. Justice Durga Das Basu defines- "Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a 'member of human family' irrespective of any consideration."

The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as- "Rights derived from the inherent dignity of the human person."

Section 2 (1)(d) of the Protection of Human Rights Act,1993 defines "human rights" as- "Human Rights are the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India".

CHARACTERISTICS AND NATURE OF HUMAN RIGHTS

1. Human Rights are Inalienable - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.

2. Human Rights are Essential and Necessary - In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.

3. Human Rights are in connection with human dignity - To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For eg. In 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.

4. Human Rights are Irrevocable - Human rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.

5. Human Rights are Necessary for the fulfilment of purpose of life - Human life has a purpose. The term "human right" is applied to those conditions which are essential for the fulfilment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.

6. Human Rights are Universal - Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.

7. Human Rights are never absolute - Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.

8. Human Rights are Dynamic - Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.

9. Rights as limits to state power - Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state's power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals,

or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

Q. What are the instruments that constitutes the International Bill of Human Rights? Explain in detail.
The Universal Declaration of Human Rights is an ideal standard held in common by nations around the world, but it bears no force of law. Thus, from 1948 to 1966, the UN Human Rights Commission's main task was to create a body of international human rights law based on the Declaration, and to establish the mechanisms needed to enforce its implementation and use.

The Human Rights Commission produced two major documents: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both became international law in 1976. Together with the Universal Declaration of Human Rights, these two covenants comprise what is known as the "International Bill of Human Rights."

The ICCPR focuses on issues such as the right to life, freedom of speech, religion and voting. The ICESCR focuses on food, education, health and shelter. Both covenants proclaim these rights for all people and forbid discrimination.

Furthermore, Article 26 of the ICCPR established a Human Rights Committee of the United Nations. Composed of eighteen human rights experts, the Committee is responsible for ensuring that each signatory to the ICCPR complies with its terms. The Committee examines reports submitted by countries every five years (to ensure they are in compliance with the ICCPR), and issues findings based on a country's performance.

Many countries that ratified the ICCPR also agreed that the Human Rights Committee may investigate allegations by individuals and organizations that the State has violated their rights. Before appealing to the Committee, the complainant must exhaust all legal recourse in the courts of that country. After investigation, the Committee publishes the results. These findings have great force. If the Committee upholds the allegations, the State must take measures to remedy the abuse.

Subsequent United Nations Human Rights Documents
In addition to the covenants in the International Bill of Human Rights, the United Nations has adopted more than twenty principal treaties further elaborating human rights. These include conventions to prevent and prohibit specific abuses such as torture and genocide and to protect specific vulnerable populations such as refugees (Convention Relating to the Status of Refugees, 1951), women (Convention on the Elimination of All Forms of Discrimination Against Women, 1979), and children (Convention on the Rights of the Child, 1989). Other conventions cover racial discrimination, prevention of genocide, political rights of women, prohibition of slavery and torture.

Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its State parties.

Q. Examine the role of UN High Commissioner in the protection and promotion of Human Rights.
The Office of the United Nations High Commissioner for Human Rights (commonly known as the Office of the High Commissioner for Human Rights (OHCHR)) is a department of the Secretariat of the United Nations that works to promote and protect the human rights that are guaranteed under international law and stipulated in the Universal Declaration of Human Rights of 1948. The office was established by the UN General Assembly on 20 December 1993 in the wake of the 1993 World Conference on Human Rights.

The office is headed by the High Commissioner for Human Rights, who co-ordinates human rights activities throughout the System and acts as the secretariat of the Human Rights Council in Geneva, Switzerland. The

current High Commissioner is Michelle Bachelet of Chile, who succeeded Zeid Raad Al Hussein of Jordan on 1st September 2018

Mandate: The mandate of OHCHR derives from Articles 1, 13 and 55 of the Charter of the United Nations, the Vienna Declaration and Program of Action and General Assembly resolution 48/141 of 20th December 1993, by which the Assembly established the post of United Nations High Commissioner for Human Rights. In connection with the program for reform of the United Nations (A/51/950, para. 79), the OHCHR and the Centre for Human Rights were consolidated into a single OHCHR on 15 September 1997.

Purpose and objectives of OHCHR

- Promote universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the United Nations
- Play the leading role on human rights issues and emphasizes the importance of human rights at the international and national levels
- Promote international cooperation for human rights
- Stimulate and coordinates action for human rights throughout the United Nations system
- Promote universal ratification and implementation of international standards
- Assist in the development of new norms
- Support human rights organs and treaty monitoring bodies
- Respond to serious violations of human rights
- Undertakes preventive human rights action
- Promote the establishment of national human rights infrastructures
- Undertake human rights field activities and operations
- Provide education, information advisory services and technical assistance in the field of human rights

Organization: The OHCHR is divided into organizational units, as described below. The OHCHR is headed by a High Commissioner with the rank of Under-Secretary-General.

High Commissioner for Human Rights (Under-Secretary-General): The United Nations High Commissioner for Human Rights, accountable to the Secretary-General, is responsible for all the activities of the OHCHR, as well as for its administration, and carries out the functions specifically assigned to him or her by the UN General Assembly in its resolution 48/141 of 20 December 1993 and subsequent resolutions of policy-making bodies. It advises the Secretary-General on the policies of the United Nations in the area of human rights, ensures that substantive and administrative support is given to the projects, activities, organs and bodies of the human rights program, represents the Secretary-General at meetings of human rights organs and at other human rights events, and carries out special assignments as decided by the Secretary-General. As well as those human rights that are currently included in legally binding treaties, the High Commissioner also promotes human rights yet to be recognized in international law (such as the adoption of economic, social and cultural rights as a strategic priority, which are not all currently recognized in international legal instruments).

Deputy High Commissioner for Human Rights (Assistant Secretary-General): The United Nations High Commissioner for Human Rights, in the performance of his or her activities, is assisted by a Deputy High Commissioner who acts as Officer-in-Charge during the absence of the High Commissioner. In addition, the Deputy High Commissioner carries out specific substantive and administrative assignments as decided by the High Commissioner. The Deputy is accountable to the High Commissioner. The current Deputy High Commissioner for Human Rights is the Australian national Kate Gilmore.

Assistant Secretary-General for Human Rights (UN Headquarters New York): The Assistant Secretary-General for Human Rights (not to be confused with the Deputy High Commissioner, who is also an Assistant Secretary-General) based in New York City heads the New York Office of the High Commissioner. The New York Office represents the High Commissioner at United Nations Headquarters in New York and promotes the integration of human rights in policy processes and activities undertaken by inter-governmental and inter-agency bodies at the United Nations. The post of Assistant Secretary-General for Human Rights was created in 2010,

when Ivan Šimonović was appointed to the position. The current Assistant Secretary-General for Human Rights, since 2016, is Andrew Gilmour.

Staff Office of the United Nations High Commissioner for Human Rights: The Staff Office of the United Nations High Commissioner for Human Rights is headed by a Chief who is accountable to the High Commissioner. The core functions of the Staff Office are to:

- assist the High Commissioner in the overall direction and supervision of the activities of the human rights program
- assist the High Commissioner in the formulation, communication, implementation and evaluation of policies, practices and activities for the promotion and protection of human rights
- assist the High Commissioner in maintaining relations with Governments, other United Nations agencies and entities, international organizations, regional and national institutions, non-governmental organizations, the private sector and academia
- assist the High Commissioner in maintaining liaison on policy matters with the Executive Office of the Secretary-General and other relevant offices at Headquarters, as well as with the spokespersons of the Secretary-General at New York City and Geneva and the media
- carry out fund-raising functions and special projects as assigned by the High Commissioner
- assist the High Commissioner in developing and maintaining a framework for the management and planning of the activities of the human rights program and facilitating the development of the overall work program, and in preparing annual management reports on activities and achievements
- represent the High Commissioner at meetings and making statements on his or her behalf

Q. Write a note on the Universal Declaration of Human Rights, I948.

The Universal Declaration of Human Rights (UDHR) emerged in 1948 as a reaction to the atrocities and oppression caused by the Second World War. It was for the first time that the rights and Freedoms of individuals were detailed and there was international acknowledgement of the "inherent dignity and of the equal or inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world". The UDHR emphasized that 'a common understanding of these rights and freedoms is of the greatest importance for the full realization of rights contained therein'. The UDHR contains rights that were culturally and politically acceptable to most countries across the world, thereby imparting a universal character to the Declaration. The Indian Constitution in fact, exemplifies the 'common understanding' of basic human rights as it incorporates the principles outlined in the UDHR in the form of Fundamental Rights and Directive Principles of State Policy.

The UDHR was framed by members of the Human Rights Commission, with former First Lady Eleanor Roosevelt as Chairperson, who began to discuss an International Bill of Rights in 1947. The members of the Commission did not immediately agree on the form of such a bill of rights, and whether, or how, it should be enforced. The Commission proceeded to frame the UDHR and accompanying treaties, but the UDHR quickly became the priority.

For the first time in history, the international community embraced document considered to have universal value – "a common standard of achievement for all peoples and all nations". Its Preamble acknowledges the importance of a human rights legal framework to maintain international peace and security, stating that recognition. of the inherent dignity and equal and inalienable rights of all individuals is the foundation of freedom, justice and peace in the world. Elaborating the United Nations Charter's declared purpose of promoting social progress and well-being in larger freedom, the Declaration gives equal importance to economic, social and cultural rights and to civil sights and political
liberties, and affords them the same degree of protection. The Declaration has inspired more than 60 international human rights instruments, which together constitute a comprehensive system of legally binding treaties for the promotion and protection of human rights. Thus, the UDHR is a landmark achievement in world history. Today it continues to affect people's lives and inspire human rights activism and legal rights all over the world.

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The UDHR is remarkable in two fundamental aspects. In 1948, the then 58 Member States of the United Nations represented a range of ideologies, political systems and religious and cultural backgrounds as well as different stages of economic development. Most important of the UDHR was to be a common statement of mutual aspirations – a shared vision of a more equitable and just world.

The Universal Declaration covers the range of human rights in 30 clear and concise articles. The first two articles lay the universal foundation of human rights: human beings are equal because of their shared essence of human dignity; human rights are universal, not because of any State or international organization, but because they belong to all of humanity. The two articles assure that human rights are the birthright of everyone; not privileges of a select few, nor privileges to be granted or denied. Article 1 declares that "all human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Article 2 recognizes the universal dignity of a life free from discrimination. "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion,
political or other opinion, national or social origin, property, birth or other status."

The first cluster of Articles, 3 to 21, sets forth civil and political rights 'to which everyone is entitled. The right to life, liberty and personal security, recognized in Article 3, sets the base for all following political rights and civil liberties, including freedom from slavery, torture and arbitrary arrest, as well as the rights to a fair trial, free speech and free movement and privacy.

The second cluster of Articles, 22 to 27, sets forth the economic, social and cultural rights to which all human beings are entitled. The cornerstone of these rights is Article 22, acknowledging that, as a member of society, everyone has the right to social security and is therefore entitled to the realization of the economic, social and cultural rights "indispensable" for his or her dignity and free and full personal development. Five articles elaborate the rights necessary for the enjoyment of the fundamental right to social security, including economic rights related to work, fair remuneration and leisure, social rights concerning an adequate standard of living for health, well-being and education, and the right to participate in the cultural life of the community.

The third and final cluster of Articles, 28 to 30, provides a larger protective framework in which all human rights are to be universally enjoyed. Article 28 recognizes the right to a social and international order that enables the realization of human rights and fundamental freedoms. Article 29 acknowledges that, along with rights, human beings also have obligations to the community which also enable them to develop their individual potential freely and fully. Article 30, finally, protects the interpretation of the articles of the Declaration from any outside interference contrary to the purposes and principles of the United Nations. It explicitly states that no State, group or person can claim, on the basis of the Declaration, to have the right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the Universal Declaration.

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Q. Critically explain the utility of the Universal Declaration of Human Rights, 1948 with reference to Indian scenario.

Several major treaties, ratified by more than 100 countries, trace their origins to the UDHR. They include, in chronological order:

- The International Convention on the Elimination of Racial Discrimination (1965).
- The International Covenant on Economic, Social and Cultural Rights (1966).
- The International Covenant on Civil and Political Rights (1966).
- The Convention on the Elimination of All Forms of Discrimination Against Women (1979).
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
- The Convention on the Rights of the Child (1989).

When a country ratifies an international agreement, it assumes a legal obligation. Citizens of states signing on to the UDHR and its progeny thus possess rights they may not have fully enjoyed earlier because their government has acknowledged and pledged to respect those rights. Signatories to many human rights treaties must prepare and submit regular reports on their citizens' freedoms. All these reports go to U.N. specialists who study them carefully and recommend where changes are needed. Citizens groups increasingly provide their own reports, with additional details. Thus, one of the hopes of the drafters of the UDHR has been increasingly met: People have a voice in their own destiny.

Still other international agreements have stemmed from the UDHR:

- Prosecution of indicted war criminals by the International Criminal Court, functioning as of 2002.
- The "responsibility to protect," as approved by the General Assembly in 2005, which places a moral obligation on countries to help states wracked by widespread disturbances or civil wars.
- An August 2006 agreement on a draft convention on the rights of the disabled.
- Adoption of a Universal Declaration of Indigenous Rights by the U.N. in September 2007.
- Reducing or eliminating the death penalty in much of Europe and elsewhere.
- Giving more attention to how transnational corporations affect human rights where they operate.

These developments required significant discussion. Nearly 20 years passed between adoption of the UDHR and the "entry into force" — full acceptance into international law — of the two international covenants described above. Twenty-five years of discussion preceded general assembly acceptance of the Universal Declaration of Indigenous Rights. On the other hand, agreement about establishing the International Criminal Court came within four years and the convention on children's rights in less than a year. The picture is thus mixed.

India and the Universal Declaration

India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights.

In ***Keshavananda Bharati v. State of Kerala***, the Supreme Court observed, "The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted." In the case of ***Jolly George Varghese v. Bank of Cochin,*** the point involved was whether a right incorporated in the Covenant on Civil and Political Rights, which is not recognized in the Indian Constitution, shall be available to the individuals in India. Justice Krishna Iyer reiterated dualism and asserted that the positive commitment of the State Parties ignites legislative action at home but does not automatically make the Covenant an enforceable part of the 'Corpus Juris' in India. Thus, although the Supreme Court has stated that the Universal Declaration cannot create a binding set of rules and that even international treaties may at best inform judicial institutions and inspire legislative action. Constitutional interpretation in India has been strongly influenced by the Declaration. In the judgement given in the ***Chairman, Railway Board and others v. Mrs. Chandrima*** as, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations.

The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts.

India ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on March 27, 1979. The Optional Protocol to the International Covenant on Civil and Political Rights, 1989, however, was not ratified by India.

STEPS AHEAD: For six decades, the UDHR has proven its durability. Yet debates remain.

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Cultural distinctiveness continues to arouse discussion about universality — the "u" in UDHR. Although the declaration's principles have been reaffirmed time after time, some assert that cultures or regions differ so much that no real global standards can exist.

A second area of controversy swirls around the rights of persons belonging to ethnic groups and national minorities. As individuals, they cannot be discriminated against because of their backgrounds. However, long-term economic or political disadvantages, deeply engrained social attitudes, and the like against the groups to which they belong raise profound questions. Do groups per se have rights?

Additional uncertainty exists with respect to internally displaced persons. They are individuals who cannot live in their usual homes because of conflict, but have not crossed an international border. Internally displaced persons (known as IDPs) confront horrendous, dangerous living conditions. They also exist in a legal no-man's-land. Had they left their own countries; they would have enjoyed international legal protection. Having remained at home or near home, they continue to be liable to many problems.

A fourth area of controversy centers on how best to settle large-scale civil conflicts. Should the international community intervene for humanitarian reasons? Should peace and reconciliation committees or similar groups be set up to establish the "truth"? Should negotiations be encouraged between opposing groups by promising amnesty to those accused of war crimes? Or would justice be served better by trying to arrest and try them in the International Criminal Court? How far do the obligations of the "right to protect" extend? Who should take responsibility for any coercive intervention?

Still another area of concern involves apologies and reparations for previous human rights injustices. Earlier violence against large numbers of people of other nationalities can — and does — sour relations between and among governments and their populations. Hence, this whole area is fraught with political difficulties, irrespective of its importance for human rights generally.

Truth commissions and truth and reconciliation groups provide an additional dimension, showing the evolution and growth of human rights. They investigate previous abuses. Their establishment suggests that previous "human wrongs" cannot be hidden forever.

Serious economic issues undercut how much — and indeed whether — individuals can enjoy full human rights. If human rights "begin with breakfast," persons must have reasonable chances for employment and schooling. They must be able to break out of the trap of poverty and avoid the debilitating impact of malnutrition and endemic disease. The UDHR speaks about these concerns in general terms. However, serious problems remain in light of economic inequalities within and between nations. Wasteful or corrupt practices by government officials reduce what is available for other needs.

Finally, and in many ways most significant, the UDHR cannot be enforced by "traditional" means of coercion. The U.N. has no armed forces of its own, but must obtain parts of other states' militaries for help. The U.N. agencies directly concerned with human rights, such as the Geneva-based Office of the High Commissioner for Human Rights, receive little funding.

Looking back to 1948, however, progress has been remarkable. A visionary document has become a living reality. The UDHR should be celebrated for its firm foundation and flexible structure.

Q. Discuss the scope and Ambit of Protection of Human Rights Act of 1993.

India is a party to International covenant on civil and political rights and the International Covenant on Economic, social and cultural rights adopted by the general assembly of United Nations on 16 December, 1966. India is a signatory to the aforesaid conventions and the human rights embodied in the said conventions are substantially protected by the constitution. However, there has been growing concern about issues relating to Human Rights in India and abroad and having regard to the changing social realities and emerging trends in the

nature of crime and violence, Government has been reviewing the existing laws and system of administration of justice.

Wide ranging discussions were held at various fora such as the chief minister's conference on Human Rights and seminars were organised in various parts of the country. As a result of which the President promulgated the protection of human rights Ordinance,1993 under article 123 of the Constitution of India on 28thSeptember ,1993 and further, it was replaced by Protection of Human Rights Bill,1993 in the Lok Sabha which paved way for the present act.

The National Human Rights Commission in India is an autonomous public body constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993.

The Act is legislated to establish the National and State Human Rights Commission. The act gives immense powers to the Commission in furtherance of prevention of violation of human rights

Protection of Human Rights Act, 1993: The Protection of Human Rights Act, 1993 was enforced on 28th January 1993. After having a deliberate discussion on the subject of Human Rights Commission Bill, 1993 was introduced in the Lok Sabha on 14th May 1993 and was referred to the standing committee of Parliament on Home Affairs. In view of urgency of the matter, Protection of Human Rights Ordinance, 1993 was introduced on 28th September 1993 by the President of India. Later, on 8th January 1994, the Protection of Human Rights Act was enacted which extends to whole of India.

Human Rights: In terms of Section 2 of the Protection of Human Rights Act, 1993 -"Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International covenants and enforceable by courts in.

Main Objectives of The Protection of Human Rights Act,1993: The main objective of protection of Human Rights Act 1993 is protecting human beings from violations. Without Human rights there would be either no if or a meaningless life. The rights relating to life, liberty equality and dignity of the individual as guaranteed by the constitution are also included in the category of "Human Rights". Human Rights are the rights and freedoms of all human beings.

The purpose of securing human rights as such is to provide protection to these rights against the abuse of power committed by the organs of state to establish institution for the promotion of living condition beings and for the development of their personality and at the same time to provide effective remedial measures for obtaining redress in the event of those rights are violated. The act provides for establishment of National Human Rights Commission, State Human right Commission and Human Rights Courts which seeks to prevent and punish any gross violation of human rights.

Historical Background of the Protection of Human rights Act, 1993: The Western countries, America in particular, criticised India on the violation of human rights by Indian armed forces and para-military forces, especially, in the State of Jammu and Kashmir. In the early 1990's India, felt the need for establishing a ÿ commission as a positive response to the criticisms of the foreign Governments in the context of political unrest and violence in Punjab, Jammu and Kashmir, the North-East and Andhra Pradesh. Though it is now a well-recognised fact that terrorism is a serious violation of human rights. America, never missed the opportunity to criticize India, whenever Indian security forces sought to deal sternly with extremists and ultras.

In addition to the pressure from foreign countries, there was a strong demand from the domestic front as well for the creation of a National Human Rights Commission. All these led the Government to enact a law to establish a Human Rights Commission. The Government's proposal to establish the Commission was of course sudden and without due deliberations. The President of India on September 27, 1993 promulgated an Ordinance for the creation of a National Human Rights Commission. Justice Ranganath Mislra, the former Chief Justice of India, was appointed the Chairperson of the Commission on October 12, 1993. Justice M.N.

Venkatachaliah, the former Chief Justice of India assumed office on November 26, 1996: IS the Chairperson after the retirement of Justice Rangnath Mishra. Justice J.S Verma, the former Chief Justice of India became the Chairperson on November 4, 1999 when Justice Venkatachaliah attained the age of 70 years. After the retirement of Justice J.S. Verma on January 16, 2003, the former Chief Justice of India Justice A.S. Anand was appointed the Chairperson of the Commission.

Key Provisions of The Protection of Human rights act ,1993: Under chapter II of the Act, the National Human Rights Commission is defined under section 2 sub clause (c) and established under section 3 of the Act. The Commission shall be constituted of members as laid under provisions of section 3 sub clause (2) which lay that there shall be a Chairperson who shall be a retired chief justice of India, 2 members who have been a judge in the Supreme Court and other member shall be chief Justice of a High Court apart from this there shall be two other members who have worked in the field of human rights. Apart from the Commission there shall be a National Commission for minorities and National Commission for women.

The members of Commission shall be appointed by the President after obtaining recommendations from Prime Minister for appointment of chairperson and the members shall be appointed in consultation with Speaker of the House of the People, Minister in-charge of the Ministry of Home Affairs, Leader of the Opposition in the House of the People, Leader of the Opposition in the Council of States and Deputy Chairman of the Council of States. The Chairperson shall hold office till a period of five years or till obtaining seventy years of age, whichever is earlier and the members shall be hold office for five years and shall be eligible for reappointment. The act also regulates the conditions of services, salaries, allowance and appointment of additional staff.

Chapter III of the Act deals with powers and functions of the Commission dealt in sections 12 to 16. The commission is granted powers to suo-motu look into matter concerning violation of human rights. The commission shall also take action in cases where victim has filed an application for violation of human rights. The Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. The Commission is bestowed with investigation powers while taking help of government officer's under section 14.

Chapter IV deals with the procedure after a complaint has come into notice of Commission. The Commission shall after receiving a notice of violation of human rights shall inquire into the matter.

Q. Discuss the role of Indian Judiciary in the protection and promotion of Human Rights in India.
In the Indian Constitution, only provision for the fundamental rights does not fulfill the objective of 'protection of dignity of an individual', but free enjoyment of the rights has to be ensured. Therefore, Article 32 guarantees right to constitutional remedies, i.e. right to move to Supreme Court to enforce fundamental rights.

It is constitutional mandate of judiciary to protect human rights of the citizens. Supreme Court and High Courts are empowered to take action to enforce these rights. Machinery for redress is provided under Articles 32 and 226 of the constitution. An aggrieved person can directly approach the Supreme Court or High Court of the concerned state for the protection of his/her fundamental rights, redress of grievances and enjoyment of fundamental rights. In such cases Court are empowered to issue appropriate Order, directions and writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari.

Judiciary is ultimate guardian of the human rights of the people. It not only protects the rights enumerated in Constitution but also has recognized certain unenumerated rights by interpreting the fundamental rights and widened their scope. As a result, people not only enjoy enumerated rights but also un-enumerated rights as well. Supreme Court in ***Maneka Gandhi v. Union of India,*** **AIR 1978 SC 597**, interpreted the right to life and to widen its scope and deduced un-enumerated right such as "right to live with human dignity". Supreme Court propounded the theory of "emanation" to make the existence of the fundamental right meaningful and active. Thereafter, in many cases court such as ***People's Union for Civil Liberties and another v. State of Maharashtra and others***, ***2014 (10) SCC 635***. ***Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, (1981) 2***

SCR 516 held that right to life includes right to live with human dignity. Therefore, through the judicial interpretations various rights have been recognized though they are not specifically provided in Part III of the Constitution.

The rule of locus standi, i.e. right to move to the court, whereby only aggrieved person can approach the court for redress of his grievances has been relaxed by the judiciary. Now court through public interest litigation permits public spirited persons to file a writ petition for the enforcement of rights of any other person or a class, if they are unable to invoke the jurisdiction of the Court due to poverty or any social and economic disability. In ***S.P. Gupta v. Union of India and others***, ***AIR 1982 SC 149***. Supreme Court held that any member of the public can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of poverty or any other disabilities. Person can even write letter to the court for making complaints of violation of rights. Public interest litigation is an opportunity to make basic human rights meaningful to the deprived and vulnerable sections of the community. To assure vulnerable section social, economic and political justice, any public-spirited person through public interest litigation can approach the court to protect their rights on behalf of aggrieved persons who cannot approach the court themselves due to their vulnerable conditions. Similar observations have been made by Supreme Court in various judgments such as in ***Bandhua Mukti Morcha v. Union of India***, ***(1984) 2 SCR 67. Ramsharan Autyanuprasi and another v. Union of India and Others, AIR 1989 SC 549***. ***Narmada Bachao Andolan v. Union of India, (2000) 4 SCJ 261***. Therefore, public interest litigation has become the tool for the protection of human rights of the people in India.

The oppressed sections of the society are more prone to the violation of human rights. Most vulnerable sections of society are children, women and socially and educationally weaker sections of society. Judiciary has taken many steps to ensure protection of human rights of these sections.

Children are more prone to exploitation and abuse. The rights of the children are needed to be specially protected because of their vulnerability. For this reason, United Nations Convention on the Rights of the Child was adopted in 1989. This convention brings together children's human rights, as children require safety and protection for their development. Judiciary is playing a commendable role in protecting the rights of children from time and again.

There are various instances where judiciary intervened and the rights of children. In the case of ***Labourers working on Salal project v. State of Jammu and Kashmir, AIR 1984 SC 117***, Supreme Court held that child below the age of 14 years cannot be employed and allowed to work in construction process. Court has issued various directions related to child labour. Supreme Court in ***Vishal Jeet v. Union of India, 1990 (3) SCC 318,*** asked governments to setup advisory committee to make suggestions for eradication of child prostitution and to evolve schemes to ensure proper care and protection to the victim girls and children. The Supreme Court further in ***Gaurav Jain v. Union of India, 1997 (8) SCC 114,*** showed its concern about rehabilitation of minors involved in prostitution and held that juvenile homes should be used for rehabilitation of them and other neglected children.

Mumbai High Court in ***Public at large v. State of Maharashtra***, ***(1997) 4 Bom CR 171***, rescued children from flesh trade and passed order for checking sexual slavery of children and for their rehabilitation. Children are not only prone to sexual abuse but they are also sometimes kept as bonded labourers as was in the case of ***People's Union for Civil Liberties (PUCL) v. Union of India, 1998(8) SCC 485*** where the Supreme Court released child labourers and also ordered for grant of compensation to them. Concern of the Supreme Court about the protection of rights of children does not ended here it reiterated the importance of compulsory primary education vis-a-vis eradication of child labour in the case of ***Bandhua Mukti Morcha v. Union of India, (1997)10 SCC 549.***

Supreme Court in ***Sakshi v. Union of India, AIR 2004 SC 3566,*** highlighted the need to establish procedure that would help the child victim to testify at ease in the court and held that proceedings should be held in cameras. Delhi High Court in ***Sheba Abidi v. State of Delhi, 113 (2004) DLT 125,*** observed that child victims are entitled

to get support person during trial and also established that child victims can testify outside the court environment.

Women are considered weak in our society which has resulted in the backwardness of women in every sphere. Women remains oppressed ones and are often denied basic human rights. They are subjected to violence in society whether it is within four walls of the house or at workplace. Despite the provision of right to equality enshrined under Article 14 of the Constitution, they are subjected to discrimination. Gender is considered to be the most important factor as for as Indian labour market is concerned. Discrimination against women laborer in terms of wage payments is a very common phenomenon in India. Wages earned by women are generally lesser than their male counterparts. However, Article 39 of the Constitution guarantees the principle of equal pay for equal work for both men and women. Despite the guarantees of equal rights to women still they are not equally treated with men. Supreme Court has played remarkable role in protection of their rights such as in case of ***Associate Banks officers Association v. State Bank of India, AIR 1998 SC 32,*** Supreme Court protected the rights of women workers and held that women workers are in no way inferior to their male counterparts and hence there should be no discrimination on the ground of sex against women. In ***State of Madhya Pradesh v. Pramod Bhartiya, AIR*** **1993 SC 286,** Supreme Court held that under Article 39 the State shall direct its policy towards securing equal pay for equal work for both men and women.

Article 21 i.e. protection of life and personal liberty was invoked for the dignified life for the prostitutes by Supreme Court in case of ***State of Maharashtra v. Madhukar Narayan Mandlikar***, ***AIR 1991 SC 207***, held that even a woman of easy virtue is entitled to privacy and no one can evade her privacy. In ***Bodhi Satwa Gautam v. Subra Chakarborty, AIR 1996 SC 922,*** Supreme Court has held that rape is a crime against basic human rights. Supreme Court laid down guidelines for protection of women against sexual harassment at work place in case of ***Vishaka v. State of Rajasthan, 1997(6) SCC 241,*** and reiterated the same in ***Medha Kotwal Lele v. Union of India, 2013(1) SCC 297***, Guidelines for ensuring the safe work environment for women were given and made it mandatory for employer to take responsibility in cases of sexual harassment at work.

Supreme Court also protected the rights of workman in ***BALCO Employees Union (Regd.) v. Union of India***, ***2002 (2) SCC 333***, ***Consumer Education & Research Centre v. Union of India***, ***1995(3) SCC 42.*** In ***People's Union for Democratic Rights v. Union of India, 1982 (3) SCC 235,*** the Supreme Court stated that releasing persons from bonded labour was connected to rehabilitation process in order to give full remedy. In ***Workmen v. Rohtas Industries, AIR 1996 SC 538,*** the Supreme Court observed that the right to equality became instrumental in protecting right of workers against unreasonable closures and discriminations in payment of pensions.

Judicial system protects the rights of its citizens including prisoners. The Supreme Court by interpreting Article 21 of the Constitution protected and preserved the rights of the prisoners. In case ***Prem Shankar v. Delhi Administration***, ***(1980) 3 SCC 538,*** Supreme Court held that practice of using handcuff and fetters on prisoners violates the guarantee of human dignity. A landmark judgment in ***D.K. Basu v. State of West Bengal***, ***(1997) 1 SCC 416***, protected the rights of the prisoners and laid down various guidelines for arrest and detention to prevent the custodial violence and observed that right to life include right to live with human dignity. Similarly, Court in ***Sheela Barse v. State of Maharashtra, AIR*** **1983 SC 378,** dealt with an issue of mistreatment of women in police station and court laid down various guidelines for the protection of rights of women in custodial/correctional institutions. Further in ***Citizens for Democracy v. State of Assam and others***, ***(1995) 3 SCC 743,*** Supreme Court held that handcuffing and tying with ropes is inhuman and in utter violation of human rights guaranteed under the international laws and the laws of the land. Court directed that handcuffs or other fetters shall not be forced on prisoners- convicted or under trial while lodged in jail or even while transporting, police and jail authorities shall have no authority to direct handcuffing of any inmate of jail or during transportation without permission from the magistrate. While executing of arrest warrant person arrested cannot be handcuffed without obtaining orders from magistrate.

Therefore, Judiciary is playing a crucial role in the protection of the human rights of the people from time and again by expanding the scope of the rights and recognizing new rights with the need of time. Judiciary has expanded the scope of right to life to include entitlements which are vital for the enjoyment of right to life with

dignity. Courts have protected right of the people in numerous cases whether it is a right against violence in custody, to live in a pollution free environment, right to health, right to adequate wages of the workers, safety of the women at workplace, compensation to rape victim and rights of the child labourers and so on.

Q. Compare between Human Rights recognised under UDHR and Fundamental Rights under Constitution of India.

1) Introduction - Human rights are derived from the principle of natural law. Human rights are being essential for the all-round development of the personality of individuals in the society, being necessarily protected and being made available to all individuals. When human rights are guaranteed by the written Constitution, they are called fundamental rights because a written the Constitution is a fundamental law of the State. These rights provide suitable conditions for the material and moral uplift of the people because of their immense significance to the human beings

2) Meaning of Human Rights - The expression "Human Rights" denotes all those rights which are inherent in our very nature and without which we cannot live as human beings. These are inalienable rights which belong equally to all the members of the human family. Human rights are not created by any legislature. They assume the position of natural rights. Human rights are also sometimes referred as fundamental rights, basic rights, inherent rights, natural rights and birthrights

3) Universal Declaration of Human Rights and the Constitution of India - The Preamble proclaims The Universal Declaration of Human Rights as a common standard of achievement for all people and for all Nations, to the end that every individual and every organ of society, keeping this in mind to promote respect for these rights and freedoms and by progressive measures and observance, both among the peoples of territories and their jurisdiction.

The Universal Declaration of Human Rights (UDHR), 1948 has provided for Civil and Political Rights under Article 2 to 21. It includes the Right to life, Right to Security, Protection against Slavery, The Right to the due and fair process of Law, Right to Privacy, the Right to Liberty of Thought and Expression, the Right to Religious Freedom, Right to Association and the Right to Property.

Article 22 to Article 27 provide for Economic, Social and Cultural Rights which Include the Right to Work, the Right to Social Security, the Right to Protection Against Unemployment, the Right against slavery and exploitation, the Right to Good Living, the Right to Education and the Right to health services.

India was a signatory to the declaration. The constitution of India which came into force on 26 January 1950 was greatly influenced by the declaration. A number of fundamental rights guaranteed to individuals in part III of the Constitution are similar to the provision of the declaration.

Universal Declaration of Human Rights, Article 1: Article 1of the Universal Declaration says that All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Preamble of the Indian Constitution - WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, Social, Economic and Political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

a) <u>Equality Before Law -</u> The Human Right to Equality means no human being is higher or lower in the eyes of Law. Therefore, there should be no discrimination on the ground of the religion, race or caste. Even if One belongs to a minority, he should be treated equally with all others.

Universal Declaration of Human Rights: Article 7 of the Universal Declaration of Human Rights- All are equal before the law and are entitled without any discrimination to equal protection of the law.
The Constitution of India: Article 14 of the Indian Constitution - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

b) Equal Protection of Law without any discrimination -
Universal Declaration of Human Rights: Article 7(2) of the Universal Declaration of Human Rights - All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.]
The Constitution of India: Article 15 of the Constitution - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

c) Right to Participate in the government of his Country
Universal Declaration of Human Rights: According to Article 21 of the Universal Declaration of Human Rights (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right to equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures
The Constitution of India: According to Article 16(1) of the Indian Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

d) Right to freedom of opinion and expression
Universal Declaration of Human Rights: According to Article 19 of the Universal Declaration of Human Rights, everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
The Constitution of India: According to Article 19(1) (a) of the Indian Constitution, all citizens shall have the right to freedom of speech and expression.

e) Right to freedom of peaceful assembly and Association
Universal Declaration of Human Rights: According to Article 20(1) of the Universal Declaration of Human Rights, everyone has the right to freedom of peaceful assembly and association.
The Constitution of India: According to Article 19(1)(b) of the Indian Constitution, all citizens shall have the right to assemble peaceably and without arms.

f) Right to work and free choice of employment
Universal Declaration of Human Rights: According to Article 23 of the Universal Declaration of Human Rights, everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.
The Constitution of India: According to Article 19(1)(c) of the Indian Constitution, all citizens shall have the right to form associations or unions or co-operative societies.

g) Right to freedom of movement and residence within the territory of a State.
Universal Declaration of Human Rights: According to Article 13(1) of the Universal Declaration of Human Rights, everyone has the right to freedom of movement and residence within the borders of each state.
The Constitution of India: According to Article 19(1)(d) of the Indian Constitution, citizens shall have the right to move freely throughout the territory of India.

h) Right to own property

Universal Declaration of Human Rights: Article 17 of the Universal Declaration of Human Rights says that everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property

The Constitution of India: Article 17 sub-clause (f) omitted. Article 31 of the Constitution gives Right to own property.

i) Freedom from Ex-Post-facto laws

Universal Declaration of Human Rights: According to Article 11 of the Universal Declaration of Human Rights, everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defense. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under the national or international law, at the time when it was committed Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

The Constitution of India: Article 20(1) of the Indian Penal Code provides Protection in respect of conviction for offences it says that No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (2) No person shall be prosecuted and punished for the same offense more than once. (3) No person accused of any offense shall be compelled to be a witness against himself.

j) Freedom from arbitrary arrest, detention or exile

Universal Declaration of Human Rights: According to Article 9 of the Universal Declaration of Human Rights, No one shall be subjected to arbitrary arrest, detention or exile.

The Constitution of India: Article 21 of the Indian Constitution provides protection of life and personal liberty it says that no person shall be deprived of his life or personal liberty except according to procedure established by law.

k) Freedom from slavery or servitude

Universal Declaration of Human Rights: Article 4 of the Universal Declaration of Human Rights says that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

The Constitution of India: Article 23 of the Indian Constitution -Prohibition of traffic in human beings and forced labor (1) Traffic in human beings and begar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offense punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

l) Right to freedom of thought, conscience, and religion

Universal Declaration of Human Rights: Article 18 of the Universal Declaration of Human Rights says that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

The Constitution of India: Article 25 of the Indian Constitution gives rights to freedom of conscience and free profession, practice and propagation of religion. It says all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Q. Discuss the origin and development of human rights with special reference to International insights.

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all human individuals by virtue of their humanity alone. These claims are articulated and formulated in what we today call human rights, and have been translated into legal rights, established according to the law-creating processes of societies, both national and international. The basis of these legal rights is the consent of the governed that is the consent of the subjects of the rights.

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Universally Accepted Notion: The values of dignity and equality of all members of the human race, like many other basic principles which underlie what we today call human rights, can be found in virtually every culture and civilization, religion and philosophical tradition.

Reflection of Value of Human Rights in Practice: Human life and human dignity have been disregarded throughout history and continues to be disregarded today. Nevertheless, the idea of rules common to all citizens dates back many centuries. What has been called 'natural law' implies the concept of a body of rules which ought to prevail in society. The principle of equality in rights, recognized in natural law, was long accepted in many societies. Yet discrimination continues to exist due to ignorance, prejudice and fallacious doctrines which try to justify inequality. Such doctrines have been used to defend slavery and discrimination on the grounds of sex, race, colour, descent, national or ethnic origin or religious belief, or on the basis of class or caste systems, throughout history and, unfortunately in modern times.

Development of the Idea of Human Rights Protection: The ideas of elaboration and protection of rights of human beings have been gradually transformed into written norms. Many important landmarks may be mentioned on this way, such as, in England Magna Carta (1215), the Petition of Right (1628) and the Bill of Rights (1689). During the eighteenth century, the early ideas of natural law developed into an acceptance of natural rights as legal rights, and these rights for the first time were written into national constitutions, thus reflecting an almost contractual relationship between the State and the individual which emphasized that the power of the State derived from the assent of the free individual. The French Declaration of the Rights of Man and of the Citizen of 1789 and the American Bill of Rights of 1791 were based on this premise. During the nineteenth century this principle was adopted by a number of independent States and social and economic rights also began to be recognized. Despite the recognition accorded to human rights in national constitutions, these rights were sometimes curtailed or eliminated by legislation or by arbitrary means and, perhaps generally, by informal social mechanisms. Moreover, human rights, in spite of their status as legal rights, were often violated by States themselves.

Recognition of the need to Internationalize Human Rights Protection: The first international treaties concerning human rights were linked with the acceptance of freedom of religion (e.g. the Treaties of Westphalia of 1648) and the abolition of slavery. Slavery had already been condemned by the Congress of Vienna in 1815 and a number of international treaties on the abolition of slavery appeared in the second half of the nineteenth century (e.g. the Treaty of Washington of 1862, documents of the Conferences in Brussels in 1867 and 1890 and in Berlin in 1885). Another field of international co-operation was the elaboration of the laws of war (e.g. the Declaration of Paris of 1856, the First Geneva Convention of 1864 and the Second of 1906 and the Hague Conventions of 1899 and 1907). The creation of the International Committee of the Red Cross (ICRC) in 1864 contributed greatly to these developments.

Since the end of the First World War, there has been a growing belief that governments alone cannot safeguard human rights, which require international guarantees. Though the mandate of the League of Nations, the first universal intergovernmental organization created after the First World War, did not mention human rights, the League tried to undertake the protection of human rights through international means. However, its concerns were limited mainly to the establishment of certain conditions for the protection of minorities in a few countries.

The standards determining the conditions of industrial workers established in the beginning of the twentieth century became the subject of further international agreements elaborated by the International Labour Organization (ILO), created in 1919. The International Slavery Convention, signed in Geneva on 25 September 1926, ended lengthy efforts aimed at the abolition of slavery. Relevant conventions for the protection of refugees were adopted in 1933 and 1938. However, despite all these developments, human rights Saw did not emerge in the inter-war period.

The totalitarian regimes established in the 1920s and 1930s grossly violated human rights in their own territories. The Second World War brought about massive abuse of human life and dignity, and attempts to eliminate entire groups of people because of their race, religion or nationality. Thus it became clear that internationa l instruments were needed to codify and protect human rights, because respect for them was one of the essential conditions for world peace and progress.

Achieving Human Rights in Practice: This conviction was reflected in and reinforced by the Charter of the United Nations signed on 26 June 1945. The Charter states the fundamental objective of the universal organization, namely: 'to save succeeding generations from the scourge of war' and 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women'. Article I of the Charter states that one of the aims of the United Nations is to achieve international co-operation in 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion', thus enshrining the principle of nondiscrimination . Article 55 expresses a similar aim, and by Article 56 all members of the United Nations 'pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55'.

The provisions of the Charter have the force of positive international law because the Charter is a treaty and therefore a legally binding document. All United Nations Member States must fulfill in good faith the obligations they have assumed under the Charter of the United Nations, including the obligations to promote respect for human rights, to promote observance of human rights, and to co-operate with the United Nations and other nations to attain this aim. However, the Charter does not specify human rights and does not establish any specific mechanism to ensure their implementation in Member States.

Creation of Human Rights Law: The task of drawing up an International Bill of Human Rights, defining the human rights and freedoms referred to in the Charter, was charged upon the Commission on Human Rights, and established in 1945, which is a subsidiary body of the Economic and Social Council (ECOSOC), one of the United Nations principal organs. A major step in drafting the International Bill of Human rights was realized on 10 December 1948, when the General Assembly adopted the Universal Declaration of Human Rights 'as a common standard of achievement for all peoples and nations'.

Q. Discuss the powers and functions of National and State Human Rights Commissions established under the Protection of Human Rights Act, 1993.

Section 3 of the Protection of Human Rights Act, 1993 provides that the Central Government shall constitute a body known as the 'National Human Rights Commission' to exercise powers confirmed upon and assigned to it under the said act. The National Human Rights Commission (NHRC) of India is an autonomous public body constituted on 12th October 1993 under the Protection of Human Rights Ordinance of 28th September 1993. It was given a statutory basis by the Protection of Human Rights Act, 1993 (TPHRA). The NHRC is the national human rights institution, responsible for the protection and promotion of human rights, defined by the Act as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants".

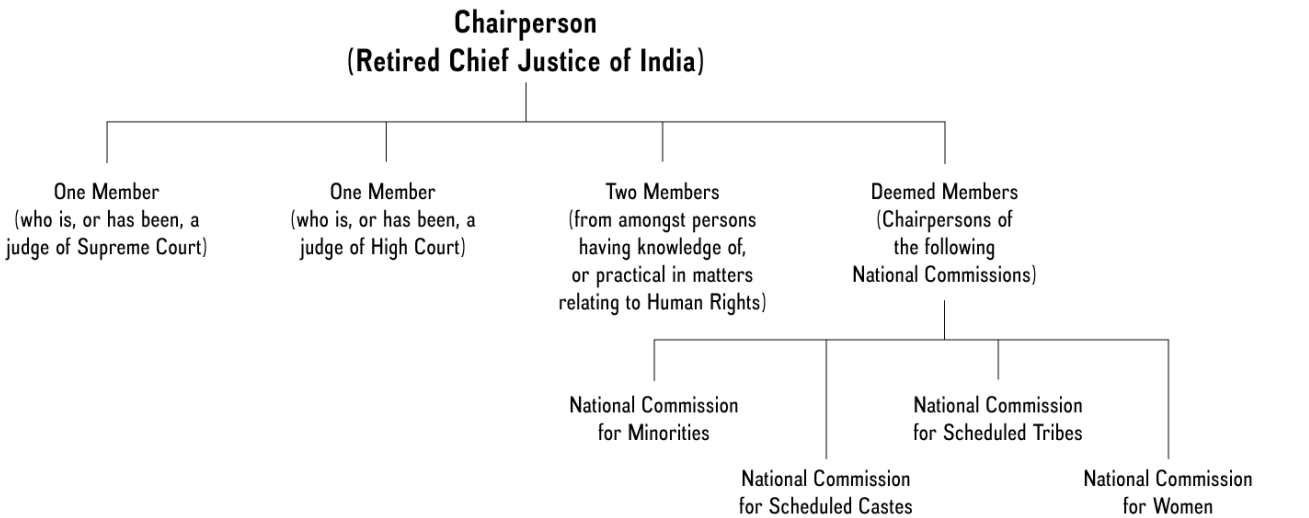
Composition of the Commission: NHRC is an autonomous institution consisting of

1. (i) A Chairperson who has been the Chief Justice of the Hon'ble Supreme Court of India
   (ii) One Member who is, or has been, a Judge of the Supreme Court of India
   (iii) One Member who is, or has been, the Chief Justice of a High Court
   (iv) Two Members to be appointed from among persons having knowledge of, or practical experience in, matters related to human rights.

2. The Chairperson of the National Commission for Minorities, National Commission for the Scheduled Castes, National Commission for the Scheduled Tribes and the National Commission for Women are deemed members of the Commission.

3. There is a Secretary General who is the Chief Executive Officer of the Commission and exercises and exercises such powers and discharges such functions as are delegated to him by the Commission or Chairperson as the case may be.

President appoints the chairperson and members of the NHRC on the recommendation of a six member committee consisting of (i) The Prime Minister (chairperson) (ii) The Home Minister (iii) The Speaker of the Lok Sabha (iv)The Leader of the Opposition in the Lok Sabha (v) The Deputy Chairman of the Rajya Sabha (vi)The Leader of the Opposition in the Rajya Sabha.


Chairperson
(Retired Chief Justice of India)
One Member
(who is, or has been, a judge of Supreme Court)
One Member
(who is, or has been, a judge of High Court)
Two Members
(from amongst persons having knowledge of, or practical in matters relating to Human Rights)
Deemed Members
(Chairpersons of the following National Commissions)
National Commission for Minorities
National Commission for Scheduled Castes
National Commission for Scheduled Tribes
National Commission for Women

Divisions of NHRC: There are six divisions in the NHRC. These have been entrusted with specific tasks and they work in close consultation and coordination. The six divisions are:

1. The Administrative Division
2. The Law Division
3. The Training Division
4. The Policy, Research and Project Division
5. The Investigation Division
6. The Information and Public Relation Division

Functions of NHRC: According to the protection of Human Rights Act, 1993, below are the functions of NHRC:

- NHRC investigates grievances regarding the violation of human rights either suo moto or after receiving a petition.
- It has the power to interfere in any judicial proceedings involving any allegation of violation of human rights.
- It can visit any jail or any other institution under the control of the State Government to see the living conditions of the inmates and to make recommendations thereon.
- It can review the safeguards provided under the constitution or any law for the protection of the human rights and can recommend appropriate remedial measures.
- NHRC undertakes and promotes research in the field of human rights.
- NHRC works to spread human rights literacy among various sections of society and promotes awareness of the safeguards available for the protection of these rights through publications, media, seminars and other means.
- The Commission takes an independent stand while providing opinions for the protection of human rights within the parlance of the Constitution or in law for the time being enforced.
- It has the powers of a civil court and can grant interim relief.
- It also has the authority to recommend payment of compensation or damages.
- NHRC credibility is duly reflected in large number of complaints received every year and the trust reposed in it by the citizens.
- It can recommend to both the central and state governments to take suitable steps to prevent the violation of Human Rights. It submits its annual report to the President of India who causes it to be laid before each House of Parliament.

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Powers Vested with the Commission Relating to Inquiries: While inquiring into complaints under the Act, the Commission shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular the following, namely;

- Summoning and enforcing the attendance of witnesses and examining them on oath;
- discovery and production of any document;
- receiving evidence on affidavits;
- requisitioning any public record or copy thereof from any court or office;
- issuing commissions for the examination of witnesses or documents;
- any other matter which may be prescribed

Working of the NHRC: Headquarter of the commission is located at Delhi.

- The commission is vested with the power to regulate its own procedure.
- It has all the powers of a civil court and its proceedings have a judicial character.
- It may call for information or report from the central or any state government or any other authority subordinate thereto.

However, the commission has its own staff to investigate into complaints of human rights violations. It is also empowered to utilize the services of any officer or investigating agency of the central government or any state government for the purpose. The commission also cooperates with various NGOs for the information regarding human rights violations. The commission can look into a matter within one year of its occurrence.

The commission may take any of the following steps during or upon the completion of an inquiry:

1. It may recommend to the concerned government or authority to make payment of compensation or damages to the victim;
2. It may recommend to the concerned government or authority the initiation of proceedings for prosecution or any action against the guilty public servant;
3. It may recommend to the concerned government or authority for the grant of immediate interim relief to the victim;
4. It may approach to the Supreme Court or the high court concerned for the necessary directions, orders or writs.

In order to make NHRC more effective, its powers could be increased in various ways to increase its effectiveness and efficiency in delivering justice to the victims. The commission should be empowered to provide interim and immediate relief including monetary relief to the victim. In addition, the commission should be empowered to punish the violators of the human rights, which may act as deterrent to such acts in the future. The interference of the government and other authorities in the working of commission should be minimum, as it may influence the working of commission. Therefore, the NHRC should be given power to investigate into the cases related to human rights violation by the members of the armed forces

Limitations of NHRC

- NHRC does not have any mechanism of investigation. In majority cases, it asks the concerned Central and State Governments to investigate the cases of the violation of Human Rights
- It has been termed as 'India's teasing illusion' by Soli Sorabjee (former Attorney-General of India) due to its incapacity to render any practical relief to the aggrieved party.
- NHRC can only make recommendations, without the power to enforce decisions.
- Many times, NHRC is viewed as post-retirement destinations for judges and bureaucrats with political affiliation moreover, inadequacy of funds also hamper it's working.
- A large number of grievances go unaddressed because NHRC cannot investigate the complaint registered after one year of incident.
- Government often out rightly rejects recommendation of NHRC or there is partial compliance to these recommendations.
- State human rights commissions cannot call for information from the national government, which means that they are implicitly denied the power to investigate armed forces under national control.

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- National Human Rights Commission powers related to violations of human rights by the armed forces have been largely restricted.

Suggestions

- There is need for complete revamping of NHRC to make it more effective and truly a watchdog of human right violations in the country.
- NHRC efficacy can be enhanced by government if commission decisions are made enforceable.
- There is need to change in composition of commission by including members from civil society and activists.
- NHRC needs to develop an independent cadre of staff with appropriate experience.
- Many laws in India are very old and archaic in nature by amending which government can bring more transparency in regulations.
- To improve and strengthen the human rights situation in India, state and non-state actors need to work in tandem.

State Human Rights Commission

The Protection of Human Rights Act of 1993 provides for the creation of State Human Rights Commission at the state level. A State Human Rights Commission can inquire into violation of human rights related to subjects covered under state list and concurrent list in the seventh schedule of the Indian constitution

Composition: Human Rights (Amendment) Act, 2006 consists of three members including a chairperson. The chairperson should be a retired Chief Justice of a High Court.
The other members should be:
(i) A serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years' experience as District judge.
(ii) A person having practical experience or knowledge related to human rights.
The Governor of the state appoints the chairperson and other members on the recommendations of a committee consisting of the Chief Minister as its head, the speaker of the Legislative Assembly, the state home minister and the leader of the opposition in the Legislative Assembly. The chairman and the leader of the opposition of legislative council would also be the members of the committee, in case the state has legislative council.

The tenure of the chairperson and members is five years or until they attain the age of 70 years, whichever is earlier. After the completion of their tenure, they are not eligible for any further employment under the state government or the central government. However, chairman or a member is eligible for another term in the commission subject to the age limit.

Removal: Removal is done by president on grounds of bankruptcy, unsound mind, infirmity of body or mind, sentenced to imprisonment for a crime, or engages in paid employment. He can also be removed for proved misbehaviour or incapacity if SC inquiry finds him guilty. They can resign by writing to governor.

Functions of the Commission: According to the protection of Human Rights Act, 1993; below are the functions of State Human Rights Commission:
(a) Inquire suo motu or on a petition presented to it, by a victim, or any person on his be into complaint of violation of human rights or negligence in the prevention of such violation by a public servant.
(b) Intervene in any proceeding involving any allegation of violation of human rights before a Court with the approval of such Court.
(c) Visit any jail or any other institution under the control of the State Government where persons are detained to study the living conditions of the inmates and make recommendations thereon
(d) Review the safeguards provided by or under the constitution of any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
(e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
(f) Undertake and promote research in the field of human rights.

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(g) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights.
(h) Encourage the efforts of Non-Governmental organizations and institutions working in the field of human rights.
(j) Undertake such other functions as it may consider necessary for the promotion of human rights.

Working of the Commission

• The commission is vested with the power to regulate its own procedure.
• It has all the powers of a civil court and its proceedings have a judicial character.
• It may call for information or report from the state government or any other authority subordinate thereto.
It has the power to require any person subject to any privilege which may be claimed under any law for the time being in force, to furnish information on points or matters useful for, or relevant to the subject matter of inquiry. The commission can look into a matter within one year of its occurrence.

Criticism: State Human Rights Commission has limited powers and its functions are just advisory in nature. The commission does not have power to punish the violators of human rights. It cannot even award any relief including monetary relief to the victim. The recommendations of State Human Rights Commission are not binding on the state government or authority, but it should be informed about the action taken on its recommendation within one month.

Conclusion: There is a requirement to increase the powers of the State Human Rights Commission. This could be increased in various ways in delivering justice to the victims. The commission should be empowered to provide interim and immediate relief including monetary relief to the victim. The commission should also be authorized to punish the violators of the human rights, which may act as deterrent to such acts in the future. The interference of state government in the working of commission should be minimum, as it may influence the working of commission.

Q. Discuss object of the International Covenants on Political and Civil Rights, I966 highlighting its important provisions.

International Covenant on Civil and Political Rights (ICCPR) elaborates the political and civil rights identified in the Universal Declaration, which include the rights to life, privacy, fair trial, freedom of religion, freedom from torture and equality before the law.

Some of the rights can be suspended in times of 'public emergency which threatens the life of the nation', provided that the derogation will not involve discrimination on grounds of race, colour, sex, language, religion or social origin. If a country wants to 'opt out' in this way, it must immediately inform the Secretary-General of the United Nations. States of emergency thus declared unfortunately often create the conditions under which gross violations of human rights occur. In no circumstances, in peace or war, is derogation permitted under the Covenant from the following fundamental rights: the rights to life, recognition before the law, freedom from torture and slavery, freedom of thought, conscience and religion, the right not to be imprisoned solely for inability to fulfil a contractual obligation, and the right not to be held guilty for committing a crime which did not constitute a criminal offence at the time it was committed.

Means provided for implementation of Human Rights under the ICCPR: Article 28 of the Covenant provides for the establishment of a Human Rights Committee consisting of eighteen independent experts, nominated and elected by States Parties to the Covenant, who serve in their personal capacities, which means that they are not acting on behalf of their State. The Human Rights Committee monitors the implementation of the Covenant in a number of ways.

The Committee examines periodic reports from States Parties to the Covenant on their compliance (Article 40). Such a report must be submitted by each State within one year of becoming party to the Covenant, and thereafter whenever the Committee so determines. The reports are examined in public and in the presence of

the representative of the State concerned, who may be questioned. On completion of each State report, the Committee issues concluding observations which reflect the main points of discussion, as well as suggestions and recommendations to the Government concerned on ways in which the Covenant could be better implemented.

The Committee can consider complaints of one State against another, provided that both have made a special declaration recognizing this role of the Committee under Article 41. To date, no such complaints have been received.

The Human Rights Committee also interprets the content and meaning of specific articles of the Covenant in its 'General Comments'. These establish the jurisprudence of the Covenant and thus guide the States Parties in their adherence to their obligations under the Covenant and in the preparation of State reports.

The Committee reports annually on its work to the United Nations General Assembly through the Economic and Social Council (ECOSOC).

Effectiveness of this reporting procedure: Since the protection of human rights depends ultimately upon compliance at the national level, the power of the Human Rights Committee is limited as it has no recourse beyond its comments. However, there is a persuasive value derived from the examination of reports in public, as governments are generally sensitive to public exposure of their human rights performance. Moreover, the principal objective of the Committee is to develop a constructive dialogue with reporting States and thereby promote the compliance of States with the provisions of the Covenant.

Reporting States are urged to make the text of the Covenants known, translated into the main local language, and brought to the attention of administrative and judicial authorities.

Dealing with the complaints from individuals: Under the provisions of the Original Protocol to the ICCPR, the Committee can receive complaints from individuals alleging violations of their rights under the Covenant, provided that the State concerned has ratified this Optional Protocol. Complaints are made by submitting written communications to the Committee. Representation may also be made by another person on behalf of a victim when the victim is not able personally to appeal to the Committee. The Committee examines a case on its 'admissibility' and then on its 'merits' or substance in closed sessions, which means in the presence of the members of the Committee only. To determine admissibility, the complaint should not be anonymous, it should not be an abuse of the procedure, it should not be under consideration by any other international procedure, and the complainant must have exhausted all possible domestic remedies.

After confidential consideration of the communication, the Committee is empowered to bring any individual complaint which it finds admissible to the attention of the State Party concerned. The State on its part undertakes to provide the Committee, within six months, with a written explanation on the matter and the remedy, if any, that it may have undertaken. The Committee takes into account all written information made available to it by the initial author of the communication, by the alleged victim and by the State concerned. The Committee adopts Views' on the merits of the case, which are forwarded to the State Party and the individual concerned, in the expectation that the State will act upon them. The Committee also makes public its decisions and views.

Q. Critically evaluate Social Economic and Cultural Rights as guaranteed under the International Convention and Indian Constitution.

Economic, Social and Cultural Rights are an important part of the international human rights law. They have been fully recognized by the international community and throughout international human rights law.

Although these rights have received less attention than civil and political rights, far more serious consideration than ever before is currently being devoted to them. The question is not whether these rights are basic human

rights, but rather what entitlements they imply and the legal nature of the obligations of States to realize them. The fact is that civil and political rights and economic, social and cultural rights are indivisible and interdependent. Without realizing economic, social and cultural rights, there cannot be a meaningful enjoyment of civil and political rights.

Key International Instruments on ESCR and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR): Various international instruments recognize economic, social and cultural rights as integral parts of the human rights framework. The first comprehensive international instrument encompassing both sets of rights i.e., civil and political rights and the economic, social and cultural rights is the Universal Declaration of Human Rights (UDHR). The International Covenant on Economic, Social and Cultural Rights (ICESCR) remains the principal instrument on economic, social and cultural rights. It recognizes the right to self-determination; equality for men and women; the right to work and favourable conditions of work; the right to form and join trade unions; the right to an adequate standard of living including adequate food, clothing and housing; the right to health and healthcare; the protection of the family; and the right to social security. As of November 2005, 149 countries have ratified the Covenant.

Other key international instruments include the Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) and the Convention on the Rights of the Child, 1989 (CRC), Limburg Principles and the Maastricht Guidelines, Vienna World Conference on Human Rights Declaration and Plan of Action and Conventions of the International Labour Organization.

General Principles of ESCR and State Obligations to Promote, Protect and Fulfill: State parties are bound to ensure minimum human rights regardless of their resource constraints. For ESC rights, minimum core requirements include available foodstuffs for the population, essential primary healthcare, basic shelter and housing, and the most basic form of education. The Committee on Economic, Social and Cultural Rights elaborated on state obligations under General Comment 3: The Nature of State Parties Obligations

How do states fulfill their minimum requirements?
Respect- the obligation to respect requires governments to refrain from interfering directly or indirectly with the enjoyment of ESCR. Protect- the obligation to protect requires governments to prevent third parties such as corporations, from interfering in any way with the enjoyment of ESCR
Fulfill- the obligation to fulfill requires governments to adopt the necessary measures to achieve the full realization of ESCR.

The Indian Context: The Indian Constitution recognizes economic, social and cultural rights as **Directive Principles of State Policy** which, unlike the guarantee of civil and political rights in the Indian Constitution, are not directly enforceable in the courts, but are intended to serve as guidance for government policy. The Indian law of economic, social and cultural rights has been developed incrementally by the courts, drawing on the Directive Principles as aids to interpretation of the civil and political rights which are justiciable under the Constitution, to elevate the status of the Directive Principles as constitutional rights. In particular, the Indian Supreme Court has adopted an expansive interpretation of the constitutional right to life, based on principles of human dignity, to protect certain economic and social rights, including the right to adequate nutrition, clothing and shelter, the right to medical facilities, the right to earn a livelihood, and environmental rights.

In the **Olga Tellis case**, the right to livelihood meant that there was an obligation on the state to afford procedural fair hearing rights to a group of pavement dwellers whose livelihoods were threatened by their eviction. Beyond procedural rights, the Supreme Court has held in **Paschim Banga Khet Mazdoor Sabha v. State of West Bengal** that the State's obligations to protect economic and social rights may include obligations to provide additional resources, for example to ensure essential healthcare services.

Similarly, the right to life and personal liberty, in Article 21 of the Constitution, has also been applied by the Supreme Court, in conjunction with Directive Principles relating to education, health, and conditions of employment, to address the working conditions of child labourers in the carpet industry.

Thus, ESC rights are no less important than fundamental rights in the constitutional scheme. It need hardly be added that the duty cast on the State under Articles 47 and 48-A in particular of Part IV of the Constitution is to be read as conferring a corresponding right on the citizens and therefore, the right under Article 21 at least must be read to include the same within its ambit. The ESC rights that the DPSP symbolize can demonstrably be read as forming part of an enforceable regime of fundamental rights. Therefore, it is crucial for the State to implement this constitutional mandate. The State has to be constantly reminded of its obligations and duties. This is the Indian Experience.

Q. Write a critical note on the convention on Rights of Child, 1989.

According to UNICEF, the Convention on the Rights of the Child is the most successful and universally accepted human rights treaty so far created. It has been signed by every single member of the United Nations, a rare event in itself. But what's more, it has been ratified by them also. There are currently only two signatories that have not ratified the Convention on the Rights of the Child. The Convention is regarded as the definitive instrument for setting the standards of protection, and defining the basic human rights of children. By limiting its area of application to children, and highlighting their particular needs, it has cut through the cold barriers and walls that frequently block other human rights conventions from receiving universal support. While all members of the human family are undeniably entitled to certain basic rights, there is something about children that makes even the most bloodthirsty tyrants willing to draw a line and make way for the causes of peace and justice. It is fair to say that the Convention on the Rights of the Child (CRC) is widely hailed as a success by both the UN, and the contracting states parties.

There are a number of aspects to the Convention that make it unique among human rights instruments. Its negotiation process was open and participatory and this led to various different legal systems influencing the process and the provisions of the final text. The text therefore lays down binding, universal standards and obligations that all children, everywhere must be guaranteed at all times. These rights are designed to protect the dignity and sound development of the child. It deals with such various topics as health care, access to education, legal protections and social services. The value of having international standards in these areas is enormous.

Another noted innovation in the Convention is that it was the first international instrument to take a more holistic approach to the problem it was addressed to solve. It covers not only strict international legal provisions but also civil liberties, political rights, economic provisions and is culturally and socially sensitive.

Passage: The United Nations Convention on the Rights of the Child was passed on the 12th of December 1989 by Generally Assembly resolution. This was the result of a series of resolutions by the General Assembly, the Commission on Human Rights and the Economic and Social Council who had all been occupied with the rights of children since the late 1970's. A draft of the Convention was prepared by the Commission on Human Rights and this was handed to the General Assembly on 24 May 1989. It's stated goal was to address the special needs that the protection of children required, particularly with reference to their peaceful and secure development and education. It recognised that there was an 'critical' need to protect children from such disturbances to their peaceful and secure development as poor social conditions, natural disasters and hunger, war and conflict, exploitation, illiteracy and other forms of disability and that these needs required international as well as national measures.

The Convention was adopted and opened for signature at the 61st plenary meeting of the General Assembly on 20 November 1989. The significance of the year 1989, as was pointed out by the General Assembly, being that it marked the thirtieth anniversary of the Declaration of the Rights of the Child and the tenth anniversary of the International Year of the Child.

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This marked the culmination of a long and arduous struggle to have children's rights protected by a dedicated international instrument. While children were previously protected by all universal human rights instruments the difficulties of getting these guaranteed by many states meant that children were being left unprotected. The standard of protection under general rights documents was also not always suitable for the needs of children. Also, as can be seen from the specific provisions of the Convention for the Rights of the Child, other instruments failed to highlight areas of specific and particular importance to children. The almost universal acceptance of the Convention fifteen years on shows the truth of these concerns. While concerns pertaining to war, terrorism and political conflict still hinder many universal rights intended for both children and adults, there has been almost exclusive acceptance of the Convention on the Rights of the Child. It should be noted however, that while the Convention marked the culmination of one process, it marked the beginning of another, perhaps even more important process of ensuring the rights enshrined in the Convention made a difference to children around the world.

If we take 1924 as the starting point of our journey, the path the conclusion of the Convention took sixty-five years. 1924 was the year the international community took its first steps in the protection of children when the league of Nations endorsed the First Declaration of the Rights of the Child. This declaration stated, 'Mankind owes to the child, the best that it has to give.'

This was somewhat augmented in 1945 when the United Nations Charter stated the guiding principle of respect for human rights and fundamental freedoms 'for all'. The Universal Declaration of Human Rights adopted by the General Assembly in 1948 states that *'All human beings are born free and equal in dignity and rights [and that] motherhood and childhood are entitled to special care and protection [and that the family is] the natural and fundamental group unit of society.'*

In the same year, the General Assembly adopted the second Declaration on the Rights of the Child which expanded on the 1924 declaration and recognised humanity's duty to meet its obligation to children in all respects. This led to a commitment to a further declaration and in 1959, over a decade later, the General Assembly adopted the third Declaration on the Rights of the Child.

These declarations, while important statements of intention had no legally binding weight, and this remained the case until 1976 when the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights came into force.

These rights were finally augmented by the Convention on the Rights of the Child in 1989, which by the target date at the end of 1995 had 185 ratifications, making it the widest and fastest ratification process ever for a human rights convention.

The above process is presented by the UN as a steady process of uninterrupted progress in the path of child rights protection. It does not take much research however to realise that it took 65 years simply to get to the point of having a convention. And the process was not as straightforward as it might at first appear. There were long delays, of over a decade or more, in the negotiations and drafting of the declarations mentioned above. Then it should not be overlooked that these declarations had no legally binding effect. The two international conventions that are referred to above were a significant advance in the process of global human rights protection but these were plagued by the problems that typically affect such instruments. Ratifications were often delayed for extended periods and the issues covered were not specifically tailored to the needs of children. Even now with the coming into force of the Convention on the Rights of the Child, there are still significant concerns regarding enforcement and ensuring a genuine protection of the rights laid down therein.

The case for a specific instrument for children: While it may seem obvious today, it was not initially clear to all parties that a separate convention with the purpose of protecting children was necessary. Many thoughts that such rights were adequately protected under general human rights law. It was however possible to make a

special case for children, and have a specific legal instrument dealing solely with their protection approved by the General Assembly.

UNICEF has recently articulated the most important elements of the argument for affording children special protection. These place emphasis on the individuality of children and their equal status as citizens. Children are too often regarded as secondary, or ancillary to their parents and by the Convention's definition, which classes all people below the age of 18 as children, literally billions of otherwise ignored people are directly addressed. Protecting this portion of society is a major investment in the future wellbeing of the earth. Children are also one of the most vulnerable groups of society. They begin life completely dependent on others of their survival and only through proper care and nurturing do they become self-sufficient. Such care is naturally provided by parents in the family but where this is not occurring, there is a positive duty on society not just to refrain from harming such children, but to step in and provide the care and guidance they need. Also, due to the fact that children are still developing mentally and physically, shortcomings in society such as poverty, poor health care, hunger and malnutrition, polluted water and an unclean environment all disproportionately harm children.

Governments are also seen as having a greater duty to children than to other groups of citizens. This again stems from children's greater vulnerability and reliance on government. The policies of governments have a disproportionate effect on the wellbeing of children, especially if they fall short of acceptable standards. However, in many parts of the globe, not only is this extra duty not taken seriously, but children are not taken into account at all in designing policies. This is partly due to the lack of a direct voice for children in politics. Traditional political thinking gives political rights to people generally by vote, and this is universally reserved for those above the age of majority, usually 18. If policies are to become more child friendly than a serious attempt must be made to listen to children's views in the areas that affect them most. While the idea is extremely basic, it is still not taken completely seriously by governments and as a method of social change is still in its infancy.

It has also been recognised that the massive societal changes that are occurring globally are having the harshest effects on children. Issues such as the breakdown of the traditional family structure, globalisation, a lack of employment and economic stability and the shrinking of welfare programs are leaving children without the security that previous generations could take for granted. While children are extremely adaptable, efforts should be made to minimise the difficulties they will face from social upheaval.

Article 12 and the right to participation: It is therefore with these arguments in mind that I will examine the contents of the Convention. There are a number of themes, some similar others different to the other conventions on human rights. The document is infused with the basic principle of human dignity. It is shocking to acknowledge the degree to which the dignity of children is set aside or compromised in many situations.

The role of the family is placed at the centre of the child's wellbeing. The family is recognised as the natural provider and safe-guarder of children's wellbeing and States must protect the child's right not to be separated from its family unless it is judged in the child's best interests.

Article 5 ensures respect for parents or other family or legal guardians of the child and they role they play in guiding children. The child's identity and family name are protected in Article 8. Immigration and Nationality rules have to pay respect to a child's need to have contact with both parents if they live or are in another country.

Under Article 12, children are also granted a new voice in decision making that affects them.
The views of children who have the capacity to form an opinion and make it known must be listened to and given a weight appropriate to the age and maturity of the child. In judicial hearings and other legal proceedings that directly affect a child, the child must be given an opportunity to have its voice heard and its views taken into consideration. The effects of Article 12 will mean different things depending on the exact circumstances of the case. What it requires is that children are involved in processes that will affect them. This is perhaps the provision of the Convention with the greatest capacity to affect genuine changes in all societies, both

developed and undeveloped. To make it a reality, all aspects of decision making and policy formulation that effect children, from education, to health care, to housing rights, will have to be radically overhauled if this provision is given its full meaning under the Convention.

Article 12 has been declared by the Committee on the Rights of the Child to be one of the guiding principles of the Convention. All acts to give effect to or implement the Convention should try to incorporate this principle of participation.

The Convention at all times remains true to the idea that children's capacities grow and evolve but are not yet fully developed. While children have a right under the Convention to have their views taken into account, it does not mean that the child will be able to make important decisions that will have a great effect on his or her life. While the child's opinion can influence decisions, the decisions will still be made by the adult party authorised to do so.

As well as having the right to express an opinion, the child must also be free to do so without the fear of pressure or manipulation. The child cannot be forced to give an opinion if they do not want to, or if doing so will not be in their best interests. Also, the process must be carried out in good faith, with a genuine view being listened to, and not as a publicity act or other form of manipulation that the child has little or no chance of influencing.

Children should also be given the legal right to bring civil actions and other legal proceedings in their own name, a right that is often reserved to their guardians or parents.

The rights granted to children under Article 12 are seen as necessary for a proper enjoyment of the wider right to freedom of expression provided by other rights instruments. The right to free expression is seen as the basis of all democracy and fair government and without it, there is no civil or political justice possible. This is why Article 12 is seen as so vital. It is the right needed by children in order to benefit from and use their right to free expression. It means that children are given the information necessary to form a proper opinion and then being given the opportunity to express this view in a manner that is fair and just to them.

Conclusion: Article 15 of the Convention grants children the right to assemble and protest peaceably. This is clearly a political right that is being granted and in conjunction with Article 12, a concerted effort to safeguard the participation of children not only in matters that affect them individually, but also at a wider political level. Democratic societies are always enhanced when the rights of the democracy are extended to cover a greater proportion of the people living in the society. From the extension of rights to ever more classes, to the lowest socio-economic groups, to former slaves, to women, all have resulted in greater freedom and justice for all. A genuine attempt to extend as much as is possible to children will have a similar effect. If the States Parties really do go beyond lip service, and genuinely promote the Article 12 right of children to participate in all decision-making processes that have a significant impact on them, the democracy and justice of our societies will be greatly enhanced.

This is not the situation at the moment. While many countries have increased the rights of participation of children, many more have not. Even in the most developed and open societies, the view that children have political rights and interests, and are capable of forming and expressing opinions on them, is not widespread. It actually will sound funny to many prominent and reasonable people.

The conclusion of this essay, is that the full meaning of Article 12 requires a real political voice to be given to children and to be presented to them in a manner they can utilise. It does not say that children have the maturity to make such important decisions, but their views should genuinely be taken into account when making decisions that affect them. Only in this way can our societies extent to children the democratic rights taken for granted by the rest of us and all governments, even the most open and advanced, have a long way to go in providing this right.

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Q. Explain and examine the legal provisions relating to protection of rights of child and prevention and control of child abuse.

Children have the right to be protected from all exploitative and vulnerable situations that have been discussed. But that is possible only if you make yourself aware of the real problems and risks that children face and of the remedies that are available in law and policy to change the situation in the best interest of children. A child may need legal help and protection. Resisting legal action when a child needs it the most is a common mistake all of us often tend to make.

Sex – Selective abortion, Female foeticide and infanticide: The main law for prosecuting persons who are engaging in sex selective abortion is the *Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.* The offences under the Act include the following.

- Conducting or associating or helping in the conduct of PND techniques/tests in an un-registered unit
- Sex selection on a woman or a man or both or on any tissue, embryo, conceptus fluid or gametes derived from either or both of them
- Taking the services of an un-qualified person, whether on honorary or payment basis.
- Conducting a PND test for any purpose other than those mentioned as permissible in the Act.
- Sale, distribution, supply, renting, allowance or authorization of use of any ultrasound machine or any other equipment capable of detecting sex of a foetus to non-registered units.
- Advertisement or communication in any from in print, electronic media or internet by units, medical professionals or companies on the availability of sex determination and sex selection in the form of services, medicines, or any kind of techniques, methods or ayurvedic medicines.

Apart from this law, the following sections from the Indian Penal Code, 1860 are also important.

- When death is caused by a person (Section 299 and Section 300).
- Voluntarily cause a pregnant woman to miscarry the unborn baby (Section 312).
- Act done with intent to prevent a child being born alive or to cause it to die after birth (Section 315).
- Causing death of an unborn child (Section 316).
- Exposing and abandoning of a child below 12 years (Section 317).
- Concealing the birth of a child by secretly disposing her/his body (Section 318).

The punishment for these offences extends from two years up to life imprisonment, or fine or both.

Child Marriage

- Prohibition of Child Marriage Act, 2006 envisages preventing child marriages with enhanced punishments of rigorous imprisonment for two years and/or fine of INR 1 lakh.
- It defines a child to mean a male below 21 years and female below 18 years. A minor is defined as a person who has not attained the age of majority as per the Majority Act.
- There are provisions for maintenance of the girl child. The husband is liable to pay the maintenance in case he is a major. In case the husband is a minor, his parents would be liable to pay the maintenance.
- The legal status of a child marriage is voidable at the option of the parties. However, if the consent is obtained by fraud, deceit or if the child is enticed away from his lawful guardians and if the sole purpose is to use the child for trafficking or other immoral purposes, the marriage would be void.
- The Act also provides for the appointment of a Child Marriage Prohibition officer whose duties are to prevent child marriages and spread awareness regarding the same.

Child Labour

Children (Pledging of Labour) Act, 1933 declares any agreement by a parent or guardian to pledge the labour of a child below 15 years of age for payment or benefit other than reasonable wages, illegal and void. It also provides punishment for such parent or guardian as well as those who employ a child whose labour is pledged. Article 24 enshrined in the Fundamental Rights and the Directive Principles of State Policy, lays down that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The Bonded Labour System (Abolition) Act, 1976 prohibits forcing a person into bonded labour for debt repayment. The act extinguishes all debt agreements and obligations. It prohibits creation of any new bondage agreement and discharges bonded labourers from all debts for which they were bonded. Compelling a person to render bonded labour is punishable under the law. This includes punishment for parents who pledge their child or other family members to work as a bonded labourer.
The Child Labour (Prohibition & Regulation) Act (CLPR Act) 1986 prohibits employment of a child in 18 occupations and 65 processes and regulates the conditions of working of children in other occupations/ processes. As per this Act a child means any person who has not completed 14 years of age. The Act provides punishment for the offence of employing or permitting employment of any child in contravention of the provisions of this Act.

List of other labour laws that prohibit child labour and/or regulate working conditions for child labourers and can be used to book the employers is as follows:
• The Factories Act, 1948.
• The Plantation Labour Act, 1951.
• The Mines Act, 1952.
• The Merchant Shipping Act, 1958.
• The Apprentices Act, 1961.
• The Motor Transport Workers Act, 1961.
• The Beedi and Cigar Workers (Conditions of Employment) Act, 1966.
• The W.B. Shops & Establishment Act, 1963.

Child Trafficking: The legal framework available for dealing with a case against child trafficking is as follows:

- The Indian Penal Code 1860 - The IPC punishes cheating, fraud, kidnapping, wrongful confinement, criminal intimidation, procuring minors, buying and selling of minors for immoral purposes.

Special and Local Laws that can be used to book particular forms and purposes of trafficking include:

- Andhra Pradesh Devadasi's (Prohibition of Dedication) Act, 1988 or Karnataka Devadasi (Prohibition of Dedication) Act, 1982
- Bombay Prevention of Begging Act, 1959.
- Bonded Labour System (Abolition) Act, 1976.
- Child Labour Prohibition & Regulation Act, 1986.
- Child Marriage Restraint Act, 1929.
- Guardian ship and Wards Act, 1890.
- Hindu Adoption and Maintenance Act, 1956.
- Immoral Traffic (Prevention) Act, 1986.
- Information Technology Act, 2000.
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.
- Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989.
- Transplantation of Human Organ Act, 1994.

HIV/AIDS: While a specific law to protect the rights of HIV positive people is in the process of being formulated, there are certain basic rights that the Constitution of India guarantees to all citizens and stand applicable even if a person if HIV positive. These are:

- **Right to Informed Consen**t - Consent has to be free. It should not be obtained by coercion, mistake, fraud, undue influence or misrepresentation.
  Consent also needs to be informed. This is particularly important in a doctor- patient relationship. The doctor knows more and is trusted by the patient. Before any medical procedure, a doctor is supposed to inform the patient of the risks involved and the alternatives available so the person can make an informed decision to undertake the procedure or not.
  The implications of HIV are very different from most other illnesses. That's why testing for HIV requires specific and informed consent from the person being tested. Consent to another diagnostic test cannot be taken as implied consent for an HIV test. If informed consent is not taken, the concerned person's rights may have been violated and he/she can seek a remedy in court.

- **Right to Confidentiality** - When a person tells someone in whom she/he places trust something in confidence, it is meant to be confidential. Sharing it with others thus amounts to a breach of confidentiality.
  A doctor's primary duty is towards the patient and she/he should maintain the confidentiality of information imparted by the patient. If a person's confidentiality is either likely to br breached or has been beached, the person has the right to go to court and sue for damages. People living with HIV/AIDS (PLWHAs) are often afraid to go to court to vindicate their rights for fear of their HIV status becoming public knowledge. However, they can use the tool of 'Suppression of Identity' whereby a person can litigate under a pseudonym (not the real name.). This beneficent strategy ensures that PLWHAs can seek justice without fear of social ostracism or discrimination.
- **Right Against Discrimination -**
  - The right to equal treatment is a fundamental right. The law provides that a person may not be discriminated against on any grounds of sex, religion, caste, creed, descent or place of birth etc. either socially or professionally by a government-run or government-controlled institution.
  - The right to public health is also a fundamental right - something which the state is supposed to provide to all persons. HIV positive persons seeking medical treatment or admission to a hospital cannot be rejected. If they are denied treatment, they have remedy in law.
  - Similarly, a person with HIV may not be discriminated against due to her/his positive status in an employment scenario. Termination in such a situation would give that person an opportunity to seek legal redress. Someone who is HIV positive but otherwise fit to continue the job without posing substantial risk to others cannot be terminated from employment. This has been held by the Bombay High Court in May 1997.

Corporal Punishment: There is no Central legislation in India banning corporal punishment in schools. Different States, however, have enacted laws or made policies to ban it.

States in India that have banned or upheld corporal punishment		
States	**Corporal punishment (banned or upheld)**	**Law/Policy**
Tamil Nadu	Banned	Corporal punishment was prohibited in Tamil Nadu in June 2003 through an amendment of Rule 51 of the Tamil Nadu Education Rules prohibiting the infliction of mental and physical pain during "corrective" measures.
Goa	Banned	The Goa Children's Act 2003 bans corporal punishment in Goa.
West Bengal	Banned	In February 2004, the Calcutta High Court ruled that caning in state schools in West Bengal was unlawful
Andhra Pradesh (Hyderabad)	Banned	Government order (GO Ms No 16) issued on February 18, 2002 imposed a ban on corporal punishment in all educational institutions, violations of which should be dealt with under the Penal Code.
Delhi	Banned	Petition filed by Parents Forum For Meaningful Education. The Delhi School Education Act (1973) had provision for corporal punishment that has been stuck down by Delhi High Court. In December 2000, the Delhi High Court ruled that provisions for corporal punishment in the Delhi School Education Act (1973) were inhuman and detrimental to the dignity of children.
Chandigarh	Banned	Corporal punishment was prohibited in Chandigarh in the 1990s.

Caste Discrimination: The Constitution of India guarantees

- Equality before the law and equal protection of laws to each and every person in the country (Article 14).
- Prohibits discrimination on grounds of race, caste, sex, descent, place of birth or residence (Article 15).
- Prohibits discrimination on grounds of race, caste, sex or place of birth in any public employment (Article 16).
- Abolishes 'Untouchability' and declares practice of 'untouchability' in any manner whatsoever, a punishable offence (Article 17).

The first Indian law that came into force to provide for punishment for the preaching and practice of 'Untouchability' and for any matter connected with it was 'The Protection of Civil Rights Act, 1955'. Even calling a scheduled caste by her/his caste name e.g. calling a 'chamar' a 'chamar' is a punishable offence under this law. In 1989, the Government of India enacted 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act', which recognises various kinds of acts of violence and discrimination inflicted upon the Scheduled Castes and the Scheduled Tribes by Non-Scheduled Castes and Non-Scheduled Tribes as punishable offences. It also provides for establishment of Special Courts at district level to try the offences under this Act, appointment of Special Public Prosecutors for the purpose of conducting cases in Special Courts, and imposition of collective fine by the State.

Street and Runaway Children

Juvenile Justice (Care and Protection) Act 2015 - The JJ Act, 2015 provides for strengthened provisions for both children in need of care and protection and children in conflict with law. Some of the key provisions include:

- change in nomenclature from 'juvenile' to 'child' or 'child in conflict with law', across the Act to remove the negative connotation associated with the word "juvenile";
- inclusion of several new definitions such as orphaned, abandoned and surrendered children; and petty, serious and heinous offences committed by children;
- special provisions for heinous offences committed by children above the age of sixteen year;
- separate new chapter on Adoption to streamline adoption of orphan, abandoned and surrendered children;
- inclusion of new offences committed against children

Drugs and Substance abuse

The Narcotic Drugs and Psychotropic Substances Act, 1985 - This law declares illegal the production, possession, transportation, purchase and sale of any narcotic drug or psychotropic substance and makes the person, addict/trafficker liable for punishment. Use or threat of use of violence or arms by the offender, use of minors for the commission of offence, commission of the offence in an educational institution or social service facility are some of the grounds for higher punishment.

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 - Under this law, people who use children for drug trafficking can be booked as abettors or conspirators to the act.

Child Begging: Kidnapping or maiming a minor for begging is punishable under Section 363A of IPC. As per Section 2(1) of the Bombay Prevention of Begging Act, 1959, "Begging" means-

- Soliciting or receiving alms, in a public place whether or not under any pretence such as singing, dancing, fortune telling, performing or offering any article for sale;
- entering on any private premises for the purpose of soliciting or receiving alms;
- exposing or exhibiting any sore, wound injury, deformity of diseases whether of a human being or animal, for extorting alms;
- allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;
- having no visible means of subsistence and wandering about or remaining in any public place in such condition or manner, which makes it *likely* that the person doing so exist for soliciting or receiving alms;

Presently, there is no Scheme of the Central Government on Beggary nor there is a central law on the matter. The States are responsible for taking necessary preventive and rehabilitative steps. Around 22 States / Union Territories have enacted their own anti-beggary legislation or adopted legislation enacted by other States/UTs.

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Q. Discuss the constitutional provisions to protection of the rights of women.

The **Constitution of India** prohibits **discrimination** based on sex but it equally directs and empowers the government to undertake special measures for women. Though the position of women has improved in the last four decades, but still they are struggling to maintain their dignity and freedom. Presently **Indian women** are facing the toughest time mentally and physically, mainly due to unawareness and lack of knowledge of legal and constitutional rights of a woman. The Constitution provides many protection rights for women such as Protective discrimination in favour of women, Right to freedom of women, Right of women against exploitation, Rights of women under directives and political representations of women. All these rights are explained below.

1. **PROTECTIVE DISCRIMINATION AND WOMEN:** The Preamble to the Constitution resolved to secure all its citizens, including equality of status and opportunity while Articles 14 to 18 and 39 provide for Right to equality and non- discrimination among men and women. Article 14 ensures that the state shall not deny to any person equality before law. It prohibits class legislation but permits reasonable classification. This is a very important provision which provides equal legal protection to women against any women-based crime. Article 15 (1) prohibits discrimination against any citizen based on religion, race, caste, sex or place of birth while Article 15 (3) permits 'protective discrimination' in favour of women according to which state can make special provision for women and the scope of this article is wide enough to cover the entire range of state activity including employment. Article 16 of constitution of India ensures equal employment opportunity to every citizen of India. Again, in **Dattatreya Motiram v. State of Bombay, AIR 1953 Bombay 311** Chief Justice Chagla held: As a result of the joint operation of Article 15(1) and Article 15(3) the state could discriminate in favour of women against men, but it could not discriminate in favour of men against women.

2. RIGHT TO FREEDOM OF WOMEN: Articles 19 to 22 of The Constitution of India provide a detailed scheme of Right to Freedom. Article 19 (1) guarantees 6 freedoms (speech and expression, assembly, association or unions, movements, residence, profession and occupation) for citizens with reasonable restrictions and Article 21 provides for Right to life and personal liberty of each and every person in India which includes Right to live with human dignity, right to livelihood, right to work, right to privacy, right against sexual harassment etc. The Indian Parliament also enacted The Indecent Representation of Women (Prohibition) Act, 1986 which prohibits indecent representation of women through advertisements, books, writings, paintings, figures films or any other manner. The Supreme Court also emphasized the need to provide a life of dignity to the sex workers in our country by giving them some technical skills through which they can earn their livelihood instead of by selling their bodies.

3. **RIGHTS OF WOMEN AGAINST EXPLOITATION:** Right against exploitation is recognized under Article 23 and 24 of the Constitution of India. Article 23 prohibits "traffic in human beings and beggar and other similar forms of labour". The expression "traffic in human beings is evidently a very wide expression including the prohibition of traffic in women for immoral or other purposes. Also, the Suppression of Immoral Traffic in Women and Girls Act, 1956 has been enacted with the object of inhibiting or abolishing the immoral trafficking of women and girls. Articles 21 & 23 also impose the duty on state to identify, release and rehabilitate freed bonded labourers. In **Gaurav Jain vs. Union of India**, the Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of mainstream social life.

4. **RIGHTS OF WOMEN UNDER DIRECTIVES:** Directive principles of State policy under Articles 36 to 51 of the Constitution of India are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Under these various rights of women have been

implemented through legislations. The Directive under Article 39(a) provides that the citizens, men and women equally have the right to an adequate means of livelihood and Article 39(d) ensures that there is equal pay for equal work for both men and women. The Parliament has enacted the Equal Remuneration Act, 1976 and to implement Article 39 (d). Article 42 of the Constitution provides that the state shall make provision for securing just and humane conditions for work and maternity relief and for this purpose the Maternity Benefit Act, 1961 was enacted.

5. **Fundamental Duties Part (IV-A):** of the Constitution deals with fundamental duties (forty-second amendment). This amendment took place perhaps in a bid to emulate the ideals of socialist countries. The reason for introducing this Part can be summarized as the fundamental duties are intended to serve as a constant endeavor to remind every citizen that while the Constitution specifically conferred on him certain fundamental rights equally, the citizen is required to observe certain basic norms of democratic conduct and democratic behavior also. While the Constitution confers certain fundamental rights on citizens, it also gives power to the State to impose reasonable restrictions on these rights. The rights given to the citizens are available only when they follow their duty. Article 51 A (e) seeks to renounce practices derogatory to the dignity of women. This provision seeks to do away with medieval feudal practices like sati, child marriages and dowry.

6. **POLITICAL REPRESENTATIONS OF WOMEN:** Article 40 of the Constitution which lay down that the state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. To realize the Directive the 73rd and 74th Constitutional Amendments had sought to ensure a certain proportion of women as chair persons of panchayats. According to Article 243- D (3) and 243-T (3), not less than one third of the total number of seats to be filled by Directive election in every Panchayat/Municipality shall be reserved for women (including SCs AND STs). This opportunity of being a part of local level arbitration process has improved the social conditions of women in village areas.

Q. Write a critical note on International Convention on Elimination of Discrimination against women, 1979.
The United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 18th October 1979. In other words, this convention can be described as an international bill of rights for women. This bill had 30 articles to define discrimination against women. CEDAW established an agenda to end the discrimination between both of the sexes and provide equality to men and women both by ensuring equal access to education, health, opportunities, and social and political life.

It is the only human right treaty which proclaims the reproductive rights of women. CEDAW was instituted on 3 September 1981 and 189 states ratified it. It was one of the most ratified international treaties. The prime focus of CEDAW was to condemn discrimination against women in all forms.

In 1994 the International Conference on Population and Development in Cairo Clearfield questioned the concept of a few important terms for women like **women empowerment**, gender equality and reproduction health etc. Although it was not a part of CEDAW it took 13 years to talk on these important issues associated with the life of women. So, a programme for empowerment and autonomy of women was initiated. The aim of this programme was to improve the political, social, economic and health status of women.

What is discrimination against women according to CEDAW: As per the Convention, the discrimination again women includes "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

What is the importance of CEDAW: After so many years of CEDAW, it is still important because it ensures that female human should get equal access to all the resources and facilities. It talks briefly about the discrimination against women based on their sex. CEDAW talks about the substantive equality between men and women which is still not visible in many countries of the world. In male dominating society, CEDAW talks about equal rights which are the need of time in the 1990s and in 2019 as well.

The impact of CEDAW: CEDAW was adopted by the United Nations 30 years ago and since then it's working to advocate equality to the women in the world. The impact of CEDAW is slow and hard-won on the lives of many women. But CEDAW is like a ray of hope for women who face discrimination. Here we need to be agreeing to this that CEDAW couldn't destroy the gender-based discrimination but it gets success to declare sex discrimination as a human right violation.

India's stand on CEDAW: India ratified the Convention of the Elimination of all forms of Discrimination against Women (CEDAW) treaty in 1994. India's constitution also gives equal rights to all its citizens; male or female. Apart from this India has many laws which help the Indian women to lead a lift of equality. But to consider women and men as equal the Indian society will have to change their mindset as at rural areas still, women need to struggle a lot.

Conclusion: The Convention on the elimination of all forms of discrimination against women (CEDAW) talks about equality which women are struggling for from a long time. Here we need to understand that women don't want the equal rights they want the right to be equal. Today we (women) are blessed as we can have access to many facilities but has the society started to consider us as equal as men? Do the girls get the same facilities as boys? We cannot call us civilized until we get the affirmative answers to these questions.

Q. Critically analyse protection of rights of women with reference to Indian Judicial decisions.
"You can tell the condition of a nation by looking at the status of its women" Jawaharlal Nehru

Women who constitute half a human population have been discriminated harassed and exploited irrespective of the country to which they belong, un-mind of the religion which they profess and oblivious of the timeframe in which they live. Everywhere women are confronted with many challenges. In all societies to a greater or lesser degree women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture.

Unfortunately, India is one of the few countries where offences against women have been increasing in tremendous way. In fact, since ages the status and the position of women in India is a controversial subject, as it reflects the contradictory and the paradoxical nature of the Indian society. In one-way people offers prayers to women as goddess, more over Indian tradition and the culture says that "yatra nari pujyante tatra ramante devta". But at the same time and in other side women are considered to be in the secondary position and they are put to atrocities even before birth till death.

In mean time constitutional law and ordinary law through judiciary has been working as a savior of women from atrocities and also giving helping hand in numerous ways for perk up status of women in all spears of their life. The status of women in our country has risen to the present level which may not be up to the mark but still satisfactory is because of active judiciary as well as public spirited people who successfully maneuvered the status of women of our country to the present level. The unbiased and independent judiciary has always played the role of a true Guardian of justice. Since independence many a times the judiciary has pro-actively interpreted and amplified the ambit of legislative provisions in favour of the unprivileged half of the society, i.e., the women of our country.

Role of Judiciary for empowering women: All provisions of the Constitution and all laws enacted by the legislature get their real meaning and import through the process of judicial interpretation. The Constitutional mandate and the various laws providing for protective discrimination in favour of women relating to several

aspects of their social, economic and political life have come up before the courts. Through various devices like judicial review, judicial activism, social action litigation and the duty of enforcement of fundamental rights the superior Courts in India have evolved a gender jurisprudence which has given substance and life to the constitutional scheme of protective discrimination in favour of women. Below is detailed overview of the judicial approach in various cases, where the Courts have successfully delivered their verdict to strengthen position of women.

1.Judicial Approach in the matters relating to Education: Education is a part of the development of the personality of all in general and woman in particular. In ***P. Sagar v. State of Andhra Pradesh, 1968 SCR (3) 565***, The Andhra Pradesh High Court observed that Article 15(3) is an exception engrafted to clause (1) of the Article 15. Thus, in view of the Article 15(3) reservation for women cannot be denied. Similarly, the reservation for sports women does not offend the provisions of Articles 15(1) and 29(2) of the Constitution. ***(Sukhdeo v. Governmentof A.P., 1966-1 Andhra WR 294)***

In ***Padmaraj Samarendra v. State of Bihar, AIR 1979 Pat 266,*** allotment of some seats for girl students in Medical Colleges was challenged on the ground that it is solely based on sex. The Court while justifying the allotment of seats for girl students held as reasonable and it cannot be said to be discrimination on the ground of sex alone.

2.Judicial Approach in the matters of Employment: In ***Air India v. Nergesh Meerza and other, (1981) 4 SCC 335,*** the Court upholding the principle of equality of status put the female employees at par with male employees and struck down the various rules as unconstitutional.

In ***Vijay Lakshmi v. Punjab University, AIR 2003 SC 3331,*** court held that appointment of lady Principal in Women's college or a lady teacher therein, cannot be held to be violative of Articles 14 and 16 of the Constitution, because classification is reasonable and it has a nexus with the object to be achieved. Moreover, it is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught.

In a plethora of cases such as ***Peoples Union for Democratic Rights v. Union of India, Randhir Singh v. Union of India, Sanjit Roy v. State of Rajasthan, Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh*** and ***Mackinnon Mackenzie and Co. Ltd. v. Andrey D' Costa*** etc. cases Judiciary has played an active role in enforcing and strengthening the constitutional goal of "equal pay for equal work" enshrined in Article 39(a), which implicit in Article 14 and 16 of the Constitution. The court has brought the equal remuneration within the contours of fundamental right of equality.

In several cases court has held that the State is competent under Arts. 15(3), 16(2) and 16(4) of the Constitution to give preference to women in government jobs where they are equally meritorious but more suited than men. The Court made it clear that giving preference to women is only an affirmative action and not a reservation which normally implies a separate quota which is reserved for a special category of person who are less meritorious.

Moreover, court also accepted that under Factories Laws, the State prohibits the appointment of women in the factories in certain categories, i.e., on the dangerous and hazardous machinery, the working hours are also restricted for the women and the State prohibits women in working in the night times.

Finally court held that allotment of seats in buses, educational institutions for ladies is also not gender discrimination, but is a protective discrimination keeping in view of the weak physical structure of women, and social safety in the society.

Prevention of sexual abuse at work places: In ***Vishaka v. State of Rajasthan, AIR 1997 SC 3011,*** Supreme Court had framed guidelines and norms for protection of working women at work place, and it held that it is the duty

of the employer to protect women from sexual abuse, which are later parliament, recognized and enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

3. Humanitarian approach of the Judiciary towards sex-workers and sexually abused women: In ***Budhadev Karmaskar v. State of West Bengal, JT 2011 (8) SC 289***, Court held that generally, our society views prostitutes as women of low character but, refuse to look at their situation from their perspective. The bench in this case must be appreciated not just for recognizing their right under Article 21 and directing the state and central governments to act for their welfare but also, to understand their perspective and impoverished situation. Not only this, but the bench acted quite actively and gave the directions to Central and State government to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India.

4. Judicial role in Stop Acid attacks, regulate and restrict the sale of acid: In ***Laxmi v. Union of India, (2014) 4 SCC 427,*** On account of increase in number of acid attacks on women in the past few years, Supreme Court in order to curb these gave directions to Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries/concerned Secretaries of the State Governments and the Administrators of the Union Territories to curb and restrict the sale of acid throughout the country.

Acid attack on a woman is equal to taking away her identity from her and such rampant increase in this heinous crime was leading to terror amongst women and Supreme Court took a vital step and certainly led to the empowerment of women to an extent and was an important step towards the safety of women in country. the Supreme Court issued several directions for the protection of acid attack victims such as: minimum 3 Lakh Rupees compensation for victims, adequate publicity of victim compensation schemes, private hospitals must not refuse treatment to victims, and full treatment must include medicines, food, bedding and reconstructive surgeries.

5. Role of judiciary in upholding special provisions for women in criminal law: In ***Yusuf Abdul Aziz v. State of Bombay, AIR 1954 SC 321,*** Supreme Court held that under section 497 of IPC man only be punished for offence of adultery and woman will be exempted though she may be equally guilty as an abettor was valid. It is reasonable classification under Article 14 and it was saved by virtue of Art. 15(3). In **Sowmithri Vihnu v. Union of India, AIR 1985 SC 1618,** the court held that the contemplation of the law, evidently, is that the wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime. In ***Revathi v. Union of India, AIR 1988 SC 835,*** the court held that that Section 497 of the Indian Penal Code is so designed that a husband cannot prosecute the wife for defiling the sanctity of the matrimonial tie by committing adultery. Thus, the law permits neither the husband of the offending wife to prosecute his wife nor does the law permit the wife to **prosecute the offending husband for being disloyal to her. Thus, both the husband and the wife are disabled from striking each other with the weapon of criminal law.**

6. Judicial approach in recognizing women guardianship rights: In ***Githa Hariharan v. Reserve Bank of India, 1992 (2) SCC 123,*** apex court struck down those rules and regulations even legislative Act which were causing for gender bias. Held that even a mother can be a legal guardian to her children whether father a live or not. In **ABC v. *The State (NCT of Delhi), AIR 2015 SC 2569*,** the Supreme Court declared landmark judgment saying that an unwed mother is not bound to disclose the name of child's father and also, she would have all the rights as a guardian to child under guardianships rights. She need not take father's consent for guardianship rights. Not only it was necessary to protect the child from social stigma but, also to protect mother's fundamental right. It was certainly an avant-garde verdict on gender quality.

7.Judiciary presumed live-in-relationship for long term as deemed marriage: In ***Dhannulal and ors. v. Ganeshram and ors, AIR 2015 SC 2382***, it was held that continuous cohabitation of a couple together that is, 'live-in relationship' would raise the presumption of marriage unless otherwise proven. In this matter, the woman had been living with a man as his wife for around 20 years until his death in the same house with the respondent-relatives who alleged that she was only a mistress and not the legally wedded wife. The woman

clearly failed to prove that she was the legally wedded wife of deceased but, the bench still held that she was eligible to inherit the property.

8. Role of judiciary in recognizing women's rights in the context of maternity benefit in case of surrogacy: In ***P Geetha v. Kerala Livestock Development Board Ltd, 2015 (1) KLJ 494,*** the petitioner, who became a mother through surrogate procedure, was not granted maternity leave by the Respondents on the ground that birth of the child was not under normal circumstances. The High Court held that while granting maternity leave, women could not be discriminated merely because the baby was obtained through surrogacy.

9.Judiciary conferring property rights on women par with men: Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, thus effectuating the right of equal status and dignity of person to women. In ***Pratap Singh v. Union of India, AIR 1985 SC 1695,*** Judiciary emphasised on gender equality as the prime consideration in interpretation of statutes conferring property rights on women, has encouraged legislation in this regard. The Supreme Court paved way for other courts to follow it as a precedent while deciding cases of women's right to property. Finally, now the Hindu Succession (Amendment Act), 2005 recognized coparcenary property rights of women.

10.Role of judiciary in safeguarding rape victim: In ***Delhi Domestic Working women's Forum v. Union of India, (1995) 1 SCC 14,*** court held that women also have the right to life and liberty; they also have the right to be respected and reacted as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honorable and peaceful life. Rape is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, normally, the right to life and privacy contained in constitution under Art. 21 and court had provided compensation to rape victims.

Two finger test, it's like getting raped once again In ***Lillu @ Rajesh & Anr vs State of Haryana, AIR 2013 SC 1784,*** For the first time, the Supreme Court in this case realized the agony and trauma of a rape victim who had to go through two finger test give her character certification and after analyzing through various precedents, held that it is violation of victim's right to privacy and dignity. Court held that medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with her privacy.

Rape is not a compoundable offence: With regard to determination of rape cases, in ***State of Madhya Pradesh v. Madan Lal, 2015 (7) SCC 681***, the Supreme Court once again clarified that rape cases cannot be compromised or mediated, as rape is a non-compoundable offence. The Court held that compromise in rape cases would be against the victim's honor and dignity, which are sacrosanct. Bench also held that allowing compromise is not a good sign to society and "such an attitude reflects lack of sensibility towards the dignity of a woman."

11. Role of Judiciary in safeguarding right to freedom of women: Articles 19 to 22 of The Constitution of India provide a detailed scheme of Right to Freedom. Article 19 (1) guarantees 6 freedoms for citizens with reasonable restrictions and Article 21provides for Right to life and personal liberty of each and every person in India which includes Right to live with human dignity, right to livelihood, right to work, right to privacy, right against sexual harassment etc.

Virginity test is violative of right to privacy: In ***Surjit Singh Thind v. Kanwalji Kaur, AIR 2003 P&H 353,*** Apex court held that allowing the medical examination of a women's virginity violates her right to privacy under Art. 21 of the Indian Constitution.

Women has right to choose her partner without any compulsion: In ***Lata Singh v. State of Uttar Pradesh, (2006) 5 SCC 475*** it was held that Right to Marriage is an essential part of the right under Art.21 and that people have the right to choose their partners without any compulsion. For there, it also held that "This is a free and democratic country, and once a person becomes a major, he or she can marry whosoever he/she likes. If the

parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter- religious marriage.

Recognizing sex selection and female feticides as offence against right to life of women: In ***CEHAT v. UOI and others, AIR 2003 SSC 3309,*** the Supreme Court had given several directions regarding sex selection and sex selective abortion and for proper implement of Pre-Natal Diagnostic Techniques Act by saying that female foeticide as a heinous act and an indicator of violence against women.

12.Judicial approach in protection of women from exploitation: Right against exploitation is recognized under Article 23 and 24 of the Constitution of India. Article 23 prohibits "traffic in human beings and beggar and other similar forms of labour". The expression "traffic in human beings is evidently a very wide expression including the prohibition of traffic in women for immoral or other purposes. Also, the Suppression of Immoral Traffic in Women and Girls Act, 1956 has been enacted with the object of inhibiting or abolishing the immoral trafficking of women and girls. Articles 21 & 23also impose the duty on state to identify, release and rehabilitate freed bonded labourers.

In ***Gaurav Jain v. Union of India, 1989 SCR Supl. (2) 173,*** the Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of mainstream social life.

Besides above there are several issues in like recognizing right to get maintenance by women not only under personal law but also under criminal procedure code irrespective of their religion, a step mother and adoptive mother is also able to get maintenance, a women, who for long term in live-in-relation also able to get maintenance because of judicial verdict only.

Conclusion: Finally, one can say that in India there are so many laws by legislatures, rules by administrator and judicial pronouncements and more importantly individual as well as group women organizations continuous affords for women protection and empowerment but too little justice to her because of lack of unawareness, un-interest among women and people in society. It is the need of the hour to have aware and empowered women. An empowered woman not only protects herself but also protect people around her. So, it is time to break silence; women should fight for her place in this male dominated society. It should be start from family itself. The mindset and the patriarchal views that have engulfed Indian people mindset since ages should be change then only the real fruits of law will be enjoyed by women.

Q. Write a critical note on Reservation Policy in Human Rights perspective.

Reservation Policy in India is a process of reserving certain percentage of seats (maximum 50%) for a certain class such as Scheduled Castes, Scheduled Tribes, Backward classes, etc. in Government educational institutions, government jobs, etc.

The reservation policy is an age-old policy being practiced in India. Its origin has its roots scattered from the ancient times when the practice of 'untouchability', caste system and Varna system was dominant in the society. In ancient times, the Hindu society was divided on the basis of Varna, Jatis or classes and they were as follows in the descending order of their social hierarchy- the Brahmans, the Kshatriyas, the Vaisyas and the Shudras. There was another class of people or rather no class people known as "untouchables" or "avarna" that is who has no class. These untouchables were considered to be impure for the society and were excluded from the social system. They had to reside outside the village and had no social rights. In some parts of the country such as Southern India, if even their shadow was casted on the upper-class people then it was considered that the person has got impure. There were strict restrictions on them for social gatherings and social life and if they violated any social norm, they were severely punished and in some cases were even killed. The division of society on the norms of purity and impurity was a very cruel system, and it had adverse effects

on the development and growth of these lower-class people where the skill and labor of an individual were recognized merely on the ground of him being a member of a lower caste. The epics like Mahabharata also quote of many instances wherein a warrior like Karna was not allowed to showcase his talent merely on the ground of him being a Shudra. He was often referred to as 'Shudra Putra' and humiliated because of his caste. The then prevalent caste system was a major reason for the advent and advancement of the Reservation Policy in India. The idea of giving reservations to a certain class of people originated because of the prevalent atrocities being done on the certain class of people. To give them an equal opportunity, an equal status in society, to uplift them socially, to bring them at par with other sections of society and moreover to bring development in the lower strata of society, were the reasons for the adoption of Reservation Policy in India.

Reservation Policy in Pre- Independence Era

The legal origin of Reservation Policy in India began with lying down of the Government of India Act, 1919 which came during the turbulent period of World War I. During this period, the British were more focused on Europe rather than on India yet they passed much important and significant legislation that aimed at the development of the Indian Territory. This Act of 1919 not only introduced several reforms for the Indian Governmental institutions but also addressed many issues of minorities including the formation of communal electorates. Though the system was criticized firmly by Montague-Chelmsford as a system that could be a hindrance to the self-development policy but because Muslims already had a communal electorate through the Minto- Morley reform of 1909 and, therefore, they found it unfeasible to take away the separate electorates of Muslims.

After the Act of 1919, the controversial Simon Commission came up in 1927 to scrutinize the Montague-Chelmsford reforms. After touring the entire Indian provinces, their representatives proposed for combining separate electorates and reserving seats for depressed classes and demand for the wider franchise was there as the economic, educational and social position of these depressed classes did not allow them to vote properly. To stamp and scrutinize the report of Simon Commission and the reforms proposed by them and how to incorporate them into new Constitution, a Round Table Conference was convened in London in 1931. There were many Indian delegates from various interest groups. The conference was chaired by Prime Minister Ramsay Macdonald. There were appeals for separate electorate from B.R Ambedkar but Mahatma Gandhi strongly opposed the appeal for separate electorate for depressed classes and because of this strong opposition from Mahatma Gandhi and Congress the issue of minority remained unresolved in the Conference.

After this the Communal Award and the Poona Pact of 1932 came into force wherein the Prime Minister Macdonald announced the communal award where the separate representations were to be provided to Muslims, Sikhs, Indian Christians, Anglo- Indians, Europeans and Dalits Depressed classes' were assigned a number of seats that were to be filled by election from special constituencies in which voters belonging to the depressed classes could only vote

The award brought in criticism from Mahatma Gandhi but was strongly supported by Dr. BR Ambedkar and other minority groups. As a result, of the hunger strike by Mahatma Gandhi and widespread revolt against the award, the Poona Pact of 1932 came into being which brought in a single general electorate for each of the seats of British India and new Central Legislatures. The stamping of the provisions of Poona Pact, 1932 were done in The Government of India Act of 1935 where reservation of seats for depressed classes was allotted. This was the scenario before the independence of India.

Post- Independence Era

Post- Independence the scenario changed and the reservation policy gained even more momentum than the pre-independence era. The Constituent assembly chaired by Dr. B.R Ambedkar framed the reservation policy and many Articles in the Indian Constitution were dedicated for the same.

Article 15(4) – Special Provision for Advancement of Backward Classes: Article 15(4) is an exception to clauses 1 and 2 of Article 15, and it was added by the Constitution (1st Amendment) Act, 1951, as a result of the decision in ***State of Madras v. Champakam Dorairajan, AIR 1951 SC 226***. In this case, the Madras Government had

reserved seats in State Medical and Engineering colleges for different communities in various proportions on the basis of religion, caste and race. The state defended the law on the ground that it was enacted with a view to promote the social justice for all the sections of the people as required by Article 46 of the Directive Principles of State Policy. The Supreme Court held the law void because it classified students on the basis of caste and religion irrespective of merit. To modify the effect of the decisions, Article 15 was amended by the Constitution (1st Amendment) Act, 1951. Under this clause, the state is empowered to make provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. After the amendment, it became possible for the state to put up a Harijan Colony in order to advance the interest of the backward classes.

Constitution (93rd amendment) Act, 2006: Provision for Reservation of Backward, SC and ST classes in private educational institutions (article 15(5)): The new clause 5 provides that nothing in Article 15 or in sub- clause (g) of Clause 1 of Article 19 shall prevent the state from making any special provisions, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause (1) of Article 30.

The above-mentioned amendment has been enacted to nullify the effect of three decisions of the Supreme Court in ***TM Pai Foundation v. State of Karnataka, AIR 2003 SC 355, Islamic Academy v. State of Karnataka, AIR 2003 SC 3724,*** and ***P.A. Inamdar v. State of Maharashtra, Air 2005 SC 3226***. In T.M Pai and P.A. Inamdar case, it had been held that the state cannot make reservations of seats in admissions in privately run educational institutions. In Islamic Academy case, it had been held that the state can fix quota for admissions to these educational institutions but it cannot fix fee, and also admission can be done on the basis of common admission test and on the basis of merit. This Amendment enables the state to make provisions for reservation for the above categories of classes in admission to private educational institutions. The Amendment, however, keeps the minority educational institutions out of its purview. Article 15 prohibits discrimination on the ground of religion. The evil effect of reservation is well known. The politicians who claim to take the country to the 21st century for which higher education is based on merit is essential, is taking a retroactive step in providing reservation to less meritorious students to private educational institutions. This appeasement policy of the government may get them some benefit in elections, but it would be harmful to the Nation.

Reservation of posts in public employment on the basis of residence (Article 16(3)): Article 16(3) is an exception to clause 2 of Article 16 which forbids discrimination on the ground of residence. However, there may be good reasons for reserving certain posts in State for residents only. This article empowers Parliament to regulate by law the extent to which it would be permissible for a state to depart from the above principle.

Reservation for backward classes in public employment (Article 16(4)): Article 16(4) is the second exception to the general rule embodied in Articles 16(1) and (2). It empowers the state to make special provision for the reservation in appointments of posts in favor of any backward class of citizens which in the opinion of the State are not adequately represented in the services under the State.

Indra Sawhney V. Union of India, AIR 1993 SC 477– The Mandal Case: The 9 Judge Constitution Bench of the Supreme Court by 6:3 majority held that the decision of the Union Government to reserve 27% Government jobs for backward classes provided socially advanced persons- Creamy Layer among them are eliminated, is constitutionally valid. The reservation of seats shall only confine to initial appointments and not to promotions, and the total reservations shall not exceed 50 percent. The court accordingly partially held the two impugned notifications (OM) dated August 13, 1990, and September 25, 1991, as valid and enforceable but subject to the conditions indicated in the decision that socially advanced persons- Creamy layer among Backward Classes are excluded. However, the court struck down the Congress Governments OM reserving 10% Government jobs for economically backward classes among higher classes.

After the landmark Mandal case, Article 16(4-A) (through 77th Amendment) and 16(4-B) (through 81st Amendment) were added. According to clause 4-A, nothing in this Article shall prevent the state from making any provision for reservation in matters of promotion to any class or classes of posts in the service of state in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State, are not adequately represented in the services under the State."

Clause 4-B seeks to end the 50% ceiling on the reservation for SCs/STs and BCs in backlog vacancies which could not be filled up in the previous years due to the non- availability of eligible candidates. **85th Amendment Act** replaces the words "in matters of promotion to any class" in clause 4- A of Article 16 with words "in matters of promotion, with consequential seniority, to any class."

Other Articles of Indian Constitution covering the Reservation Policy

Article 17 talks about the abolition of untouchability and declares its practice in any form to be an offense punishable under law. The **Social Security Charter of Directive Principles of State Policy** under **Article 39-A** directs the State to ensure equal justice and free legal aid to Economically Backward Classes and under **Article 45** imposes a duty on the state to raise the standards of living and health of backward classes. **Articles 330-342** talk about the special provisions for the certain class of people such as Scheduled Castes, Scheduled Tribes, Anglo –Indians, Linguistic minorities and OBC.

Conclusion: The reservation policy in India was adopted with a reason to uplift certain castes who were subjugated to atrocities, social and economic backwardness due to the prevalent dominance of caste system in Hindu Society.

This reason has somewhere lost its essence in the modern era, and the castes that should be actually benefitted are not being benefitted, and the others are reaping the benefits of the reservation system that are actually not meant for it. Today, the reservation system has just become a tool for politicians to gain vote banks. The recent agitation from the Patels of Gujarat to include them in the category of OBC was shocking for the entire nation, as the people who were agitating to get reservations in the state of Gujarat were in no ways socially and economically backward.

In the State of Tamil Nadu, the reservation system proved to be a havoc for the society wherein the Brahmans had very cleverly churned themselves down in the league of the backward bandwagon and had gained enormously from the reservation system. For these possible reasons, the Creamy Layer has been excluded from the list of Scheduled Castes, Scheduled Tribes and OBC after the landmark Mandal Case.

In one of the landmark decisions of ***Ashok Kumar Thakur v. Union of India***, Justice Ravindran smelling the dangers from the present trend on the reservation had rightly opined that when more people aspire for backwardness instead of forwardness, the Country itself stagnates. It is quite impossible to declare Reservation policy as good or bad as those benefitting from it would always support it and declare it to be good while those who are being at a loss because of the system would always curse it and declare it to be bad. But what matters the most is not that whether the reservation policy is good or bad instead what matters is the idea and the reason behind its adoption. If that reason is losing its essence, then, of course, the reservation policy would gradually turn out to be bad.

The political indulgence in the process of reservation has merely reduced from a noble idea to a strategy to increase the vote bank. Moreover, a lot of criticism has been made on the criteria of reservations. The socially and economically backward classes are not actually in practical and real sense socially and economically backward, the only stamp of being from a backward caste is enough to gain profits in the name of reservations. The reservation policy is good till the point some deserving candidate is not missing upon his opportunity because of the prevalent reservation system. I find no reason for giving admissions to undeserving students over deserving students. If these classes of people have been denied opportunities in past, then the scenario is being repeated with the general class in the present. The undeserving should not reap the fruits of the labor of the deserving.

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We also need to understand that when we talk about development then simultaneously, we cannot talk about backwardness. If we would demand more and more backwardness, then it is obvious we cannot move forward, and we will not be able to move forward, our progress would ultimately get stagnant. It is also important that the essence of the idea of the adoption of reservation policy should be maintained, and the actual backward classes who are in real and not fiction denied access to education, job opportunities etc. be benefitted. This reservation policy should not become a ladder to climb on the stairs of profit, money and other related interests for those who are just roaming with the stamp of being a backward class and are actually socially and economically much more stable than the general class.

Q. Examine the relationship between Fundamental Rights and Directive Principles of State Policy in Indian perspectives.

The constitution of India is considered as the longest written constitution of any sovereign nation in the world. At its birth, it had 395 articles in 22 parts and 8 Schedules and it currently has a Preamble, 25 Parts with 12 schedules, 5 appendices, 101 amendment and 448 articles. January 26 is celebrated as the Republic Day every year. The importance of the Constitution was given effect after 69 years and later on, it was amended 103 times also.

What are Fundamental Rights and DPSP?

Fundamental rights and DPSP as cherished in the Constitution of India together comprises the human rights of an individual. The Constitution expresses fundamental rights as an idea which appeared in India in 1928 itself. The Motilal Committee Report of 1928 clearly shows inalienable rights derived from the Bill of Rights enshrined in the American Constitution to be given to the individual. These rights were preserved in Part III of the Indian Constitution. of India.

Fundamental rights are also known as Inherent rights because they are inherent to every person by birth. These are the rights which provide an individual with some basic rights for the purpose of survival. No discrimination is made on the basis of religion, caste, race etc. and if any person feels so that his fundamental rights are being infringed then he can surely approach to court for the violation of his rights.

There are six fundamental right mentioned under the Constitution of India

- Right to equality
- Right to freedom
- Right to freedom of religion
- Right against exploitation
- Cultural and educational rights
- Rights to constitutional remedies

Right to Equality: Freedom Law is supreme in nature and everyone is equal before the law and equal treatment should be given to everyone. No discrimination should be done on the basis of race, caste, creed or gender. An equal amount of opportunity should be given to every individual in the field of employment. Abolition of untouchability and titles.

Right to Freedom: Every individual has the right to freedom to form an association, peacefully assemble, to travel or move freely reside and settle at any location and to go or opt for any profession throughout the territory of India. Right to education, life, liberty and dignity also fall under this right, protection in respect of arrest and detention and conviction of an offence.

Right against Exploitation: Prohibition of Child labour and Human trafficking and forced labour is a result of this right.

Right to Freedom of religion: This right provides us with the freedom to follow any religion without any question mark and freedom to attend any religious ceremony at a religious institution or education centre and pay tax for the promotion of religion. Nobody can force any individual who is not interested in paying any kind of tax for religious purposes.

Cultural and educational Right: It provides protection to different languages and varieties of culture present in India. It also protects the rights and culture of minorities. Establishing educational institutions and primary education to every child below the age of 14 years comes under this head.
Rights to seek Constitutional remedies

An individual has the right to move in any court of law if they feel fundamental rights are being violated. Our constitution consists of 5 writs. Here writs mean the ***"Order of court"***. If only fundamental rights are violated then the individual can directly approach to Supreme Court of India. The writs are explained below:

1. Habeas corpus
2. Mandamus
3. Prohibition
4. Certiorari
5. Quo warranto

Habeas Corpus: It simply means to ***'Produce the body'***. This writ is issued to produce a person who has been detained and to present him before the court to release if such detention is illegal.

Mandamus: This means '***We Command'***. It is an order given by the Superior Court to the Inferior Court to perform a public duty.

Prohibition: It is basically known as ***Stay order*** which prohibits from doing certain actions by the authority where it has no jurisdiction to deal with the case.

Certiorari: This means ***'to be Certified'***. This order can be issued by the Supreme Court for quashing the order which is already passed by any inferior court, tribunal or authority.

Quo – warranto: It signifies ***by what authority?*** It is a writ issued to restrain a person from holding a public office to which he is not entitled.

The concept of DPSP emerged from ***Article 45* of the Irish Constitution**. DPSP imposes a duty upon the state not only to protect and acknowledge the Fundamental right of the individual but also to achieve Social-economic goals. DPSP was summarizing in Part IV of the Indian Constitution of India. Certain guidelines are present for the state authority to work upon them for the protection of society. It mostly focuses on welfare and improvement of society altogether. As fundamental rights are enforceable in a court of law, DPSP cannot be enforced for making any rules, policy or guidelines.
Some of the examples of DPSP are:

1. Right to education
2. Maternity benefit
3. Uniform Civil code
4. Providing proper nutrition food
5. Providing adequate means of livelihood

However, it is already a controversial topic in the Constitution about the relationship of Fundamental rights and DPSP, as there would be conflict in the interest of individual at a micro level and benefit of the community at a macro level. The central part of this controversy is the question person should have primacy in the case of conflict between Chapter III and IV of the Constitution of India.

Relationship between Fundamental Rights and DPSP: Constitution of India is a Grundnorm all the law which are made must conform to the constitution of India.

The difference between DPSP and FR are:

Fundamental Rights	Directive principles of State Policy
Fundamental rights are enforceable through courts of law. (justice able)	Directive principles of State policy are not enforceable (non-justice able)
Fundamental rights prohibit the state from doing certain things.	Directives are affirmative instruction to the State to do certain things.
Civil and political rights are predominant in fundamental rights.	Economic and social rights are predominant in the directive principle
Contravention of any fundamental rights can be rescinded by the court.	The courts cannot declare any law as void on the ground that it contravenes any of the directive principles.
Courts can strike down an act of Government violative of any fundamental right and can enforce the right against the Government.	

For better understanding about the conflict between DPSP and Fundamental Rights lets study some of the important case laws and then we can decide what happens when a conflict arises between both of them. The first case we are going to study is about ***Golak Nath vs the State of Punjab, A.I.R. 1976 SCR (2) 762***. Firstly, we will see what the Supreme Court has said and then we will discuss what the parliamentary action was taken. In this case, S.C. said Fundamental rights cannot be diluted, abridged, diminished, finish or taken away and then in response to it by bringing Amendment Act of the Constitution and inserted ***Article 31 (C)*** in part III now what does Article 31 (C) say: By making a law under ***Article 39 (B)*** which talk about material resources of community and ***Article 39 (C)*** discuss the operation for an economic system. They say that if any law is framed with effect to DPSP and if it violates ***Article 14, 19*** and ***21*** then the law should not declare constitution as void merely on this ground.

In ***Champak Dorairajan vs. the State of Madras***, the Supreme Court held that DPSP cannot override the provisions of Part III of the Constitution of India i.e. the Fundamental Rights. Now DPSP has to run subsidiary to the Fundamental rights and have to confirm them and this was very important judgement the parliament responded by amending various fundamental rights which were coming in conflict with DPSP.

So, now we will move to our next Case ***Kerala Education Bill*** where the ***Doctrine of Harmonious Construction was introduced by the Supreme Court.*** Now, what is the Doctrine of Harmonious Construction? It says that you need to constitute the provision of the constitution in such a way that fundamental rights and DPSP go hand in hand so this was there to avoid the situation of conflict while enforcing DPSP and Fundamental rights. So you should construe each and every provision of the constitution is such a way so they work harmoniously. Now as per this doctrine the court held that if no inherent power is present then no conflict will arise but if any conflict comes in force just because the court is trying to interpret a particular law so they should attempt to give effect to both as far as possible.

So, to connect them together by doing something without doing any kind of amendment. After all the efforts to make everything look balanced if any interpretation is done then the court has to implement Fundamental rights over DPSP.

In the case of ***Kesavananda Bharathi, 1973*** Supreme Court held that Parliament can amend any part of the Constitution but without destroying the basic structure of the constitution. Now, the second clause of Article 31 (C), as we have read earlier, was declared unconstitutional and void because that was against the basic structure. However, the first clause of Article 31 (C) was said to be valid. In response, the parliament brought the 42nd Amendment Act, 1976 and extended the scope of the above provisions of Article 31 (C).

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Now in the case of ***Pathumma vs. the State of Kerala, 1978***, the Supreme Court emphasised on the purpose of DPSP that is to fix some social- economic goals. The constitution aims at bringing about a combination between DPSP and Fundamental rights which is reflected in several other cases as well.

In ***Minerva Mills Case***, the Court held that the law under Article 31 (C) would be protected only if it is made to implement the directive in Article 39 (b) and (c) and not in any other DPSP. Earlier protection was given to all the DPSP but after this case, it becomes restrictions and was declared that if protection is given to all DPSP it will be declared as void and unconstitutional in nature.

In ***State of Kerala vs. N.M.Thomas, 1976***, the Supreme Court said that Fundamental rights and DPSP should be built in such a way to be with each other and every effort should be taken by the court to resolve the dispute between them.

In ***Olga Tellis vs. Bombay Municipal Corporation, 1985***, the Supreme Court has submitted that DPSP are fundamental in the governance of the country so equal importance should be given to meaning and concept of fundamental rights

In ***Dalmia Cement vs. Union of India,*** the Supreme Court said that Fundamental rights and DPSP are supplementary and complementary to each other and the preamble to the constitution which gives an introduction, fundamental rights, DPSP are conscience of the Constitution.

In ***Ashok Kumar Thakur Vs. Union of India, 2008,*** the Supreme Court said that no difference can be made between the 2 sets of rights. Fundamental rights deal with Civil and political rights whereas DPSP deals with social and economic rights. DPSP are not enforceable in a court of law doesn't mean it is subordinate.

So basically, in all these cases, what they are trying to explain is that Fundamental rights and DPSP go together. Neither of them is supreme to each other. Government has done several acts for the implementation purpose like panchayat were established by 73rd amendment, Nagar Palika under Article 41, compulsory education to every child who is below the age of 14 years and it was made Fundamental rights, to protect monuments of national importance now this right was converted into a law that is ***Ancient and Historical Monuments and Archaeological sites and remains (Declaration of National Importance) Act, 1951.***

Conclusion: It can be concluded by saying that the basic feature of the constitution is to maintain harmony between fundamental rights and DPSP. They are complementary and supplementary to each other. The theme of fundamental rights must be made in light to DPSP.

Q. Write short notes on:
(a) Human Rights Courts
One of the objects of the Protection of Human Rights Act, 1993 as stated in the preamble of the Act, is the establishment of human rights courts at district level. The creation of Human Rights Courts at the district level has a great potential to protect and realize human rights at the grassroots.

The Protection of Human Rights Act, 1993 provides for establishment Human Rights Courts for the purpose of providing speedy trial of offences arising out of violation of human rights. It provides that the state Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Sessions to be a Human Rights Court to try the said offences. The object of establishment of such Courts at district level is to ensure speedy disposal of cases relating to offences arising out of violation of human rights.

The Act refers to the offences arising out of violations of human rights. But it does not define or explain the meaning of "offences arising out of violations of human rights". It is vague. The Act does not give any clear indication or clarification as to what type of offences actually are to be tried by the Human Rights Courts. No efforts are made by the Central Government in this direction. Unless the offence is not defined the courts

cannot take cognizance of the offences and try them. Till then the Human Rights Courts will remain only for namesake.

Even if "offences arising out of violations of human rights" are defined and clarified or classified, another problem arises in the working of the Human Rights courts in India. The problem is who can take cognizance of the offences. What the Act says is in each district, one Sessions Court has to be specified for trying "offences arising out of human rights violation". It is silent about taking of cognizance of the offence. The Prevention of Corruption Act, 1988 is another law, which provides for appointment of a Sessions Judge in each district as Special Judge to try the offence under the said Act. Provision has been made in section 5 of the Prevention of Corruption Act, 1988 empowering the Special Judge to take cognizance of the offences under the said Act. In the Protection of Human Rights Act, 1993 it is not so.

Sessions Court of the district concerned is considered as the Human Rights Court. Under the Criminal Procedure Code, 1973 a Sessions Judge cannot take cognizance of the offence. He can only try the cases committed to him by the magistrate under Section 193 of the Cr.P.C.

Similar problem had arisen in working of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in the beginning. The Special Judges used to take cognizance of the offences. In ***Potluri Purna Chandra Prabhakara Rao V. State of A.P., 2002 (1) Criminal Court cases 150***, ***Ujjagar singh & others V. State of Haryana & another, 2003 (1) Criminal Court Cases 406*** and some other cases it was held that the Special Court (Court of Session) does not get jurisdiction to try the offence under the Act without committal by the Magistrate. The Supreme Court also held same view in ***Moly & another V. State of Kerala, 2004 (2) Criminal Court Cases 514***. Consequently, the trial of all the cases under the Prevention of Atrocities Act were stopped and all the cases were sent to the Courts of jurisdictional Magistrates. Thereafter the respective Magistrates took cognizance of the cases and committed them to the Special Courts. The Special Courts started trying the cases after they were committed to them. The Act was later amended giving the Special Courts the power to take cognizance of the offences under Act.

The situation in respect of the Human Rights courts under the Protection of Human Rights Act, 1993 is not different. Apart from the above, the Special Courts will face yet another question whether provisions of Section 197 of Cr.P.C. are applicable for taking cognizance of the offences under the Protection of Human Rights Act, 1993. In most of the cases of violation of human rights it is the police and other public officers who will be accused. The offence relates to commission or omission of the public servants in discharge of their duties. Definitely the accused facing the trial under the Act raise the objection. There is plethora of precedents in favour of dispensing with the applicability of Section 197 of Cr.P.C. on the ground that such acts (like the ones which result in violation of human rights) do not come within the purview of the duties of public servants. But there is scope for speculation as long as there is no specific provision in the Act dispensing with the applicability of Section 197 of Cr.P.C.

The object of establishment of such Courts at district level is to ensure speedy disposal of cases relating to offences arising out of violation of human rights. Unless the lawmakers take note of the above anomalies and remove them by proper amendments the aim for which provisions are made for establishment of special courts will not be achieved.

(b) Human Rights and Environment

The relationship between human rights and the environment was first recognized by the UN General Assembly in the late 1960s. In 1972, the direct relationship between the environment and the right to life was recognized by the United Nations Conference on the Human Environment. The Preamble stated that *"Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. Both aspects of man's environment, the natural and the manmade, are essential to his well-being and to the enjoyment of basic human rights –even the right to life itself."* Principle 1 of the Stockholm Declaration established a further foundation for linking human rights and

environmental protection, declaring that *"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."* In 1982 the World Charter for Nature acknowledged that *"Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients."* In 1992, the United Nations Conference on Environment and Development (also known as the Earth Summit) stated that *"Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."* The Declaration also provided for the right of access to environmental information and of public participation in environmental decision making. In 2002, the World Summit on Sustainable Development merely acknowledged the position that there exists a possible relationship between environment and human rights.

In addition, the UN Human Rights Commission adopted several resolutions linking human rights and the environment, such as *Res. 2005/60* entitled Human rights and the environment as part of sustainable development. The resolution called on states "to take all necessary measures to protect the legitimate exercise of everyone's human rights when promoting environmental protection and sustainable development and reaffirmed, in this context, that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms." The resolution emphasized the needs of the vulnerable members of society and also encouraged efforts towards the implementation of the Rio Declaration on Environment and Development.

The human rights that are directly affected by the state of the environment consist but are not limited to the following: The right to life, the right to an adequate standard of living and the right to health. Also, procedural human rights such as access to information and participation in decision making are connected to the right of citizens and communities to partake in the formulation of environmental policies.

The Right to Life: On several occasions, environmental destruction would ultimately result in the curtailment of this right.

The Right to Health: Article 12 of the International Covenant on Economic, Social and Cultural Rights states that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Article 2(b) therein provides that "The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the improvement of all aspects of environmental and industrial hygiene."

The right to health includes an array of factors that contribute to a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights refers to these as the "underlying determinants of health". They include, amongst others healthy environmental conditions.

The Rights of the Child (Right to Health): Article 24 of the Convention on the Rights of the Child provides that: States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health." Article 24(c) provides that States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures to combat disease and malnutrition…, taking into consideration the dangers and risks of environmental pollution." In addition, The Committee on Economic, Social and Cultural Rights has underlined that States must protect against pollution or contamination by private companies and assess their impact on the environment.

(c) Human Rights and United Nations Charter.

Human rights refer to the basic rights and freedoms to which all humans are entitled, often held to include the right to life and liberty, freedom of thought and expression, and equality before the law. Human rights are the foundation of human existence and coexistence. They are universal, indivisible and interdependent. Human rights are recognised as fundamental by the United Nations and, as such, feature prominently in the Preamble

of the Charter of the United Nations: *"… to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small…"*. The United Nations is the only international entity with jurisdiction for universal human rights legislation. Where it has been adopted, legislation commonly contains:

- **security rights** that prohibit crimes such as murder/ enforced involuntary suicide, massacre, torture and rape;
- **liberty rights** that protect freedoms in areas such as belief and religion, association, assembling and movement;
- **political rights** that protect the liberty to participate in politics by expressing themselves, protesting, participating in a republic;
- **due process rights** that protect against abuses of the legal system such as imprisonment without trial, secret trials and excessive punishments;
- **equality rights** that guarantee equal citizenship, equality before the law and nondiscrimination;
- **welfare rights** (also known as economic rights) that require the provision of, e.g. education, paid holidays, and protections against severe poverty and starvation;
- **group rights** that provide protection for groups against ethnic genocide and for the ownership by countries of their national territories and resources.

Charter of the United Nations and The Universal Declaration of Human Rights (UDHR)

The United Nations (UN) is an international organisation whose stated aims are to facilitate cooperation in international law, international security, economic development, social progress and human rights issues. The pursuit of human rights was a central reason for creating the UN. It was founded in 1945 and began with fifty countries signing the United Nations Charter. As of 2007, there are 192 United Nations member states, encompassing almost every recognised independent state. The UN Charter obliges all member nations to promote "universal respect for, and observance of, human rights" and to take "joint and separate action" to that end. The Charter consists of a preamble and a series of articles divided into chapters. It includes: purposes of the United Nations; criteria for membership; the organs and institutions of the UN; arrangements for integrating the UN with established international law; and the enforcement powers of UN bodies.

The Universal Declaration of Human Rights (UDHR) is an advisory declaration adopted by the United Nations General Assembly (A/RES/217, 10 December 1948 at Palais de Chaillot, Paris). It consists of a Preamble and 30 articles setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination.

(d) 'Due Process of Law' – with reference to suitable cases.

Due process of law doctrine not only checks if there is a law to deprive the life and personal liberty of a person, but also see if the law made is fair, just and not arbitrary. If SC finds that any law as not fair, it will declare it as null and void. This doctrine provides for more fair treatment of individual rights. Under due process, it is the legal requirement that the state must respect all of the legal rights that are owed to a person and laws that states enact must confirm to the laws of the land like – fairness, fundamental rights, liberty etc. It also gives the judiciary to assess the fundamental fairness, justice, and liberty of any legislation. Thus, Due process protect the individual against the arbitrary action of both executive and legislature.

The Vth Amendment of the US Constitution lays down inter alia that "no person shall be deprived of his life, liberty or property, without due process of law" This clause known as the due process clause, has been the most significant single source of judicial review in the U.S.A. The word 'due' in this clause is interpreted to mean 'just', 'proper' or 'reasonable', accordingly to the judicial view. Therefore, the Courts can pronounce whether a law affecting a person's life, liberty or property is reasonable or not. The Court may declare a law invalid if it does not accord with its notions of what is just and fair in the circumstances.

Due process has two aspects. Substantive due process envisages that the substantive provisions of a law should be reasonable and not arbitrary. Procedural due process envisages a reasonable procedure, i.e., the person affected should have fair right of hearing which includes four elements;

1. Notice
2. Opportunity to be heard
3. An impartial tribunal
4. An orderly procedure

Under the concept of 'due process', the Courts become arbiter of reasonableness of both substantive as well as procedural provisions in a law. The word 'due' is of variable content in the 'due process' concept. It denotes that the law should be 'just' but what is 'just and reasonable' is not a static or rigid concept; it varies from situation to situation and hence one thing might be reasonable in one case but not in another. The due process clause has been used by the U.S. Supreme Court to extend both procedural and substantive safeguards to "Life, liberty and property".

In ***A.K. Gopalan v State of Madras, AIR 1950 SC 27,*** the petitioner A.K. Gopalan, a communist leader, was detained under the Preventive Detention Act, 1950. The petitioner challenged the validity of the Act and his detention there under on the following grounds:

1. That it violated his right to move freely throughout the territory of India which is the very essence of personal liberty guaranteed under Article 19 of the Constitution. The detention under this Act was not a reasonable detention under clause (5) of Article 19 and hence the Act was void
2. That the Act was in conflict with Article 21 of the Constitution in as much as it provided for deprivation of the personal liberty of a man not in accordance with 'procedure established by law'. It was argued that the word law in Article 21 should be understood not in the sense of an enactment but as signifying the universal principles of natural justice and a law which did not incorporate these principles could not be valid
3. That the expression "procedure established by law" meant the same thing as "due process of law" in the American Constitution.

The petitioner argued that the expression "procedure established by law" was synonymous with the expression "due process of law" of the American Constitution. It was contended that the Indian Constitution gives the same protection with the only difference that while the due process clause has been interpreted in America to cover both substantive and procedural law, only the protection of procedural law is guaranteed in India. The contention was that the omission of the word due made no difference to the interpretation of Article 21; the word established was not equivalent to prescribed, but had a wider meaning; the word law did not mean enacted law but it meant principles of natural justice.
But the Supreme Court rejected the aforesaid contention and held that the "procedure established by law" did not mean "due process of law" as understood in America. There was no justification for adopting the meaning of the word "law" as interpreted by the Supreme Court of America in the expression "due process of law" merely because the word "law" is used in Article 21. This is clear from the report of the Drafting Committee of the Constituent Assembly in respect of Article 21. The Report of the Drafting Committee shows that Constituent Assembly had formerly used the American expression "due process of law" but they deliberately dropped it in favour of the expression "procedure established by law", which is more specific.

Thus, in this case, the majority held that the expression "procedure established by law" must mean procedure prescribed by the law of the State. The interpretation put on the due process clause by American Supreme Court has been characterized by the utmost vagueness and that it means just what the five Judges of the Court say. If the Constitution-makers wanted to preserve in India the same meaning, they would have not dropped the phrase.

But in ***Maneka Gandhi v Union of India, AIR 1978 SC 597,*** the Supreme Court has overruled the above case and has held that the mere prescription of some kind of procedure is not enough to comply with the mandate

of Article 21. The procedure prescribed by law has to be fair, just and reasonable. It should not be fanciful, oppressive or arbitrary. A procedure to be fair or just must embody the principles of natural justice.

In ***Nand Lal v State of Punjab, AIR 1981 SC 2041,*** the validity of an order of detention made under Section 3 of the *Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1982,* was challenged on the ground that procedure adopted by the Advisory Board in allowing legal assistance to the State but denying such assistance to the detenue, was both arbitrary and unreasonable and hence violated Article 21. The Court applying the *Maneka Gandhi's* principle held that the procedure adopted by the Advisory Board was arbitrary and illegal and consequently, the detention order was liable to be quashed. Although under the above Act the detenue has no right to legal assistance in the proceedings before the Advisory Board, but it does not preclude the Board to allow such assistance to the detenue when it allows the same to the State.

(e) Fundamental Duties.

Fundamental Duties of the citizens have also been enumerated for the Indian citizens by the *42nd Amendment of the Constitution, adopted in 1976*. **Article 51 'A'** contained in Part IV A of the Constitution deals with Fundamental Duties. Fundamental Duties are **taken from the Constitution of Russia.**

The Following are the Duties in Our Constitution:

a) To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem- It is the duty of every citizen to respect the ideals, which include liberty, justice, equality, fraternity and institutions namely, executive, the legislature and the judiciary. Hence all of us are supposed to maintain the dignity of constitution by not indulging in any activities which violate them in letter and spirit. It also states that if a citizen by any overt or covert act shows disrespect to the constitution, the National Anthem or the National Flag it would spell doom to all our rights and very existence as citizens of a sovereign nation.

b) To cherish and follow the noble ideals which inspired our national struggle for freedom-The citizens of India must cherish and follow the noble ideals which inspired the national struggle for freedom. These ideals were those of building a just society and a united nation with freedom, equality, non-violence, brotherhood and world peace. If the citizens of India remain conscious of and committed to these ideals, we will be able to rise above the various separatist tendencies raising their ugly heads now and then, here and there.

c) To uphold and protect the sovereignty, unity and integrity of India- it is one of the preeminent national obligations of all the citizens of the India. India is a vast and diverse nation with different caste, religion, sex and linguistic people; if freedom and unity of the country are jeopardized then united nation is not possible. Hence in a way sovereignty lies with the people. It may be recalled that these were first mentioned in preamble and also under 19(2) of fundamental rights reasonable restrictions are permitted on freedom of speech and expression in the interest of the sovereignty and integrity of India.

d) To defend the country and render national service when called upon to do so – it is the duty of every citizen to defend our country against external enemies. All the citizens are bound to be conscious of any such elements entering India and also when in need, they should be ready to take up arms to defend themselves. It is addressed to all the citizens other than those belonging to army, navy and the air force.

e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women – Given the vast diversities among people, the presence of one flag and single citizenship strengthens the spirit of brotherhood among the citizens. It states that people should rise above narrow cultural differences and strive towards excellence in all spheres of collective activity.

f) To value and preserve the rich heritage of our composite culture – our cultural heritage is one of the noblest and richest, it is also part of the heritage of the earth. Hence it is our duty to protect what we have inherited from the past, preserve it and pass on to the future generations. India is also one of the most ancient

civilizations of the world. Our contributions towards art, science, literature is well known to the world, also this land is birth place of Hinduism, Jainism and Buddhism.

g) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures – these natural reserves are the most valued assets of our country hence it is the duty of every citizen to protect it. Rising pollution, large scale degradation of forests is causing immense harm to all the human lives on earth. Increasing natural calamities is a proof to it. It is also reinforced in other constitutional provision under article 48A i.e. Directive Principles of State Policy which states that, to protect and improve the environment and safeguard the forests and wildlife

h) To develop the scientific temper, humanism and the spirit of inquiry and reform – It is a known fact that it is necessary to learn from the experiences and developments around the world for our own development. It is duty of every citizen to protect and promote scientific temper and spirit of inquiry to keep pace with fast changing world.

i) To safeguard public property and to abjure violence – it is unfortunate that in a country which preaches non-violence to the rest of the world, we ourselves see from time to time incidents of senseless violence and destruction of public property. Among all the fundamental duties this one holds a great significance in current scenario when strike, protest etc have become a common phenomenon. Whenever there is a strike or bandh or rally, mob develops mentality to harm public properties like buses, buildings and to loot them and citizens who are protectors become mute spectators.

j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. –As responsible citizens whatever work we take up should be directed towards achieving the goal of excellence so that our country constantly rises to higher levels of endeavour and achievement. This clause has potential to not only regenerate and reconstruct the country but also to raise it to the highest possible level of excellence.

k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years – it was the recommendation of National Commission to Review the Working of constitution, to make education a fundamental right of all the children up to age of 14. 86th Constitutional amendment Act, 2002 however provided for free and compulsory education as a legally enforceable fundamental right for all children between 6 to 14 years of age.

Criticism of Fundamental Duties

- Some of them are difficult to be understood by common people
- Criticized for being moral precepts, pious platitudes, vague and repetitive
- No need to be implemented as they all are performed by the people even if not included
- Their inclusion in Part IV-A after fundamental rights has reduced their value and significance.
- Some of the important points which were recommended by Swaran Singh committee were not included, such as

1. Parliament should impose penalty or punishment in case of non-compliance of duties
2. If punishment is imposed according to above clause, it cannot be called in question in any court on any ground
3. Duty to pay taxes to be incorporated as fundamental duty

- Other important duties like family planning, voting etc should be included

Conclusion: Thus, finally it can be said that the government efforts cannot be successful unless citizens of the country generally participate in the decision-making process of the government. Even the unstated duties like voting should be effectively discharged by the citizens. Public spirited people and politicians should come forward to take interest in local community problems. These duties are a constant reminder to us of the national goals as well as the basic norms of political order. They may inspire us to inculcate in ourselves a sense of social responsibility.

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(f) Working of the West Bengal Human Rights Commission

The Government of West Bengal has constituted this Commission vide Notification No. 42 HS/HRC Dt: 31-01-1995 to exercise the powers conferred upon and to perform the functions assigned to the State Human Rights Commission under Chapter V of the Protection of Human Rights Act. Section 21(2). The commissions become fully functional vied its Notification No. 180 HS/HRC Dt: 13-04-1995.

According to TPHRA, 1993 (with amendment act 2006), the commission is entitled to perform any of the following functions:

- Autonomously investigate on a petition filed by a victim or any person on his/her behalf as a complaint of

1. Violation of human rights and instigation or
2. Negligence in the prevention of such violations by any public servant.

- Get involved in any proceeding under allegation or violation of human right pending before a court with the approval of that court.
- Inspect living conditions of the inmates in any jail or any other institution under the control of the State Government where persons are detained or lodged for purposes of treatment, reformation or protection.
- Review the safeguards provided in the constitution or any other law for the time it is in force to ensure the protection of human rights
- Review the factors that inhibit the enjoyment of human rights
- Undertake and promote research and awareness programs in the field of human right
- Promote human right awareness through literacy campaigns, publications, seminars etc. for the protection and safeguards available under human rights practices.
- Encourage involvement of Non-Government Organizations and individuals for expansion work in the field of human rights awareness.
- Perform any other functions that may be considered necessary for the promotion of human rights.

It is clarified that though the Commission has the power to inquire in violation of human rights (or instigation thereof) by a public servant. Instances where the human rights are violated by any individual citizen then the Commission can intervene, if there is failure or negligence on the part of a public servant to prevent any such violation.

(g) Public Interest Litigation

In Indian law, **public interest litigation** means litigation for the protection of the public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public interest litigation is the power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body.

Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public-spirited individual.

Origin & Development: The seeds of the concept of public interest litigation were initially sown in India by *Krishna Iyer J.,* in 1976 in **Mumbai Kamagar Sabha vs. Abdul Thai (AIR 1976 SC 1455; 1976 (3) SCC 832)** and was initiated in **Akhil Bharatiya Soshit Karamchari Sangh (Railway) Vs. Union of India And Ors. 1981 AIR SC 298**, wherein an unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redressal of common grievances. Krishna Iyer J., enunciated the reasons for liberalization of the rule of Locus Standi in **Fertilizer Corporation Kamgar vs. Union of India (AIR 1981 SC 149;**

1981 (2) SCR 52) and the ideal of 'Public Interest Litigation' was blossomed in **S.F. Gupta and others vs. Union of India, (AIR 1982 SC 149).**

Public Interest Litigation and Judicial Activism: Public interest litigation or social interest litigation today has great significance and drew the attention of all concerned. The traditional rule of "Locus Standi" that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of public-spirited citizens for the enforcement of constitutional o- legal rights. Now, any public-spirited citizen can move/approach the court for the public cause (in the interests of the public or public welfare) by filing a petition:
1. in Supreme Court under Art.32 of the Constitution;
2. in High Court under Art.226 of the Constitution; and
3. in the Court of Magistrate under Sec.133, Cr. P.C.

Justice Krishna layer fertilizer Corporation Kamgar Union vs. Union of India, (1981) enumerated the following reasons for liberalization of the rule of Locus Standi:-

1. Exercise of State power to eradicate corruption may result in unrelated interference with individuals' rights.
2. Social justice wan ants liberal judicial review administrative action.
3. Restrictive rules of standing are antithesis to a healthy system of administrative action.
4. "Activism is essential for participative public justice".

Therefore, a public minded citizen must be given an opportunity to move the court in the interests of the public. In order to ensure that FRs did not remain empty declarations, the founding fathers made various provisions in the Constitution to establish an independent judiciary. Provisions related to FRs, DPs and independent judiciary together provided a firm constitutional foundation to the evolution of PIL in India. The founding fathers envisaged ''the judiciary as a bastion of rights and justice''. An independent judiciary armed with the power of judicial review was the constitutional device chosen to achieve this objective. The power to enforce the FRs was conferred on both the Supreme Court and the High Courts—the courts that have entertained all the PIL cases.

Merits
1. In Public Interest Litigation (PIL) vigilant citizens of the country can find an inexpensive legal remedy because there is only a nominal fixed court fee involved in this.

2. Further, through the so-called PIL, the litigants can focus attention on and achieve results pertaining to larger public issues, especially in the fields of human rights, consumer welfare and environment.

Demerits
1. The genuine causes and cases of public interest have in fact receded to the background and irresponsible PIL activists all over the country have started to play a major but not a constructive role in the arena of litigation. Of late, many of the PIL activists in the country have found the PIL as a handy tool of harassment since frivolous cases could be filed without investment of heavy court fees as required in private civil litigation and deals could then be negotiated with the victims of stay orders obtained in the so-called PILs.

2.The framers of Indian constitution did not incorporate a strict doctrine of separation of powers but envisaged a system of checks and balances. Policy making and implementation of policy are conventionally regarding as the exclusive domain of the executive and the legislature. **Vishaka v State of Rajasthan** which was a PIL concerning sexual harassment of women at work place. The court declared that till the legislature enacted a law consistent with the convention on the Elimination of All Forms of Discrimination Against Women which India was a signatory, the guidelines set out by the court would be enforceable.

3.The flexibility of procedure that is a character of PIL has given rise to another set of problems. It gives an opportunity to opposite parties to ascertain the precise allegation and respond specific issues.

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4.The credibility of PIL process is now adversely affected by the criticism that the judiciary is overstepping the boundaries of its jurisdiction and that it is unable to supervise the effective implementation of its orders. It has also been increasingly felt that PIL is being misused by the people agitating for private grievance in the grab of public interest and seeking publicity rather than espousing public cause.

STEPS NECESSARY: With the view to regulate the abuse of PIL the apex court itself has framed certain guidelines (to govern the management and disposal of PILs.) The court must be careful to see that the petitioner who approaches it is acting bona fide and not for personal gain, private profit or political or other oblique considerations. The court should not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain political objectives. There may be cases where the PIL may affect the right of persons not before the court, and therefore in shaping the relief the court must invariably take into account its impact on those interests and the court must exercise greatest caution and adopt procedure ensuring sufficient notice to all interests likely to be affected.

At present, the court can treat a letter as a writ petition and take action upon it. But, it is not every letter which may be treated as a writ petition by the court. The court would be justified in treating the letter as a writ petition only in the following cases-
(i) It is only where the letter is addressed by an aggrieved person or
(ii) a public spirited individual or
(iii) a social action group for enforcement of the constitutional or the legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress.

Even though it is very much essential to curb the misuse and abuse of PIL, any move by the government to regulate the PIL results in widespread protests from those who are not aware of its abuse and equate any form of regulation with erosion of their fundamental rights. Under these circumstances the Supreme Court of India is required to step in by incorporating safe guards provided by the civil procedure code in matters of stay orders /injunctions in the arena of PIL.

Conclusion: Public Interest Litigants, all over the country, have not taken very kindly to such court decisions. They do fear that this will sound the death-knell of the people friendly concept of PIL. However, bona fide litigants of India have nothing to fear. Only those PIL activists who prefer to file frivolous complaints will have to pay compensation to then opposite parties. It is actually a welcome move because no one in the country can deny that even PIL activists should be responsible and accountable. In any way, PIL now does require a complete rethink and restructuring. Anyway, overuse and abuse of PIL can only make it stale and ineffective. Since it is an extraordinary remedy available at a cheaper cost to all citizens of the country, it ought not to be used by all litigants as a substitute for ordinary ones or as a means to file frivolous complaints.

(h) Freedom of Speech and Expression

Article 19(1) (a) of the Constitution of India guarantees to all its citizens the right to freedom of speech and expression. The law states that, “all citizens shall have the right to freedom of speech and expression”. Under Article 19(2) “reasonable restrictions can be imposed on the exercise of this right for certain purposes. Any limitation on the exercise of the right under Article 19(1) (a) not falling within the four corners of Article 19(2) cannot be valid.

The freedom of speech under Article 19(1) (a) includes the right to express one’s views and opinions at any issue through any medium, e.g. **by words of mouth, writing, printing, picture, film, movie etc.** It thus includes the freedom of communication and the right to propagate or publish opinion. But this right is subject to reasonable restrictions being imposed under Article 19(2). Free expression cannot be equated or confused with a license to make unfounded and irresponsible allegations against the judiciary.

It is important to note that a restriction on the freedom of speech of any citizen may be placed as much by an action of the State as by its inaction. Thus, failure on the part of the State to guarantee to all its citizens irrespective of their circumstances and the class to which they belong, the fundamental right to freedom of speech and expression would constitute a violation of Article 19(1)(a).

The fundamental right to freedom of speech and expression is regarded as **one of the most basic elements of a healthy democracy for it allows its citizens to participate fully and effectively in the social and political process of the country.** In fact, the freedom of speech and expression gives greater scope and meaning to the citizenship of a person extending the concept from the level of basic existence to giving the person a political and social life.

This right is available only to a citizen of India and not to foreign nationals. This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.

In the Preamble to the Constitution of India, the people of India declared their solemn resolve to secure to all its citizen liberty of thought and expression. The Constitution affirms the right to freedom of expression, which includes the right to voice one's opinion, the right to seek information and ideas, the right to receive information and the right to impart information. The Indian State is under an obligation to create conditions in which all the citizens can effectively and efficiently enjoy the aforesaid rights. In **Romesh Thappar v State of Madras (AIR 1950 SC 124),** the Supreme Court of India held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication, as publication is of little value without circulation. **Patanjali Sastri, J.,** rightly observed that-

'Freedom of Speech and of Press lat at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of Government, is possible'

However, Article 19(2) of the Constitution provides that this right is not absolute and 'reasonable restrictions' may be imposed on the exercise of this right for certain purposes. The right to freedom of expression includes the right to express one's views and opinions on any issue and through any medium whether it be in writing or by word of mouth.

The phrase "speech and expression" used in Article 19(1) (a) has a broad connotation. **This right includes the right to communicate, print and advertise the information.** In India, **freedom of the press** is implied from the freedom of speech and expression guaranteed by Article 19(1)(a). The freedom of the press is regarded as a "**species of which freedom of expression is a genus**". On the issue of whether 'advertising' would fall under the scope of the Article, the Supreme Court pointed out that the right of a citizen to exhibit films is a part of the fundamental right of speech and expression guaranteed by Article 19(1)(a) of the Constitution.

Indian law does not expressly refer to commercial and artistic speech. However, Indian Law is developing and the Supreme Court has ruled that 'commercial speech' cannot be denied the protection of Article 19(1)(a) of the Constitution. The Court has held that 'commercial speech' is a part of the 'right of freedom of speech and expression' as guaranteed by our Constitution. The citizens of India have the right to receive 'commercial speech' and they also have the right to read and listen to the same. This protection is available to the speaker as well as the recipient.[iv] Freedom of Speech and Expression also includes artistic speech as it includes the right to paint, sign, dance, write poetry, literature and is covered by Article 19(1)(a) because the common basic characteristic of all these activities is freedom of speech and expression.

Under the provisions of the Constitution of India, an individual as well as a corporation can invoke freedom of speech arguments and other fundamental rights against the State by way of a Writ Petition under Articles 32

and 226 of the Constitution of India subjects to the State imposing some permissible restrictions in the interests of social control.

Under the provisions of Indian law, the right to invoke the freedom of speech arguments is not limited to individuals alone. Corporations are also entitled to invoke such arguments. The cases of **Bennet and Coleman & Co. v. Union of India (1973) 2 SCR 757** and **Indian Express Newspapers (Bombay) P. Ltd v. Union of India (1986) AIR, SC. 515**, are of great significance. In these cases, the corporations filed a writ petition challenging the constitutional validity of notifications issued by the Government. After much deliberation, the Courts held that the right to freedom of speech cannot be taken away with the object of placing restrictions on the business activities of citizens. However, the limitation on the exercise of the right under Article 19(1)(a) not falling within the four corners of 19(2) is not valid.

(k) Equality before law and non-discrimination

Article 14 of the constitution guarantee the right to equality to every citizen of India. It embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. Article 14 embodies the idea of equality expressed in preamble.

ARTICLE 14- EQUALITY BEFORE LAW: Article 14 declares that 'the State shall not deny to any person equality before the law or equal protection of law within the territory of India.'. thus article 14 uses the two expressions "equality before law" and "equal protection of law". The phrase "equality before law" find a place in almost in written constitution that guarantees fundamental right both these expressions. Both this expression aims at establishing what is called "equality of status" While both the expression is kind of identical but they don't give similar meaning.

EQUALITY BEFORE LAW: Its origin is from America. And somehow its negative concept. It aims at implying the absence of any special privilege by reason of birth, sex, religion etc. in favor of individuals and the equal subject of all the classes to the ordinary law

EQUAL PROTECTION OF LAW: Its origin is from British. And somehow it is a positive concept. it aims at equality of treatment in equal circumstances. It means whether someone is P.M. or President he should be deal with same law as normal being deals with

RULE OF LAW: The guarantee of equality before the law is an aspect of what Dicey calls the Rule OF Law in England. It means that no man is above the law and that every person whatever be his rank or condition is subject to the jurisdiction of ordinary courts. Rule of law require that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.

Article 14 Permits Classification But Prohibits Class Legislation: The equal protection of laws guaranteed by Article 14 does not mean that all laws must be general in character. It does not mean that the same laws should apply to all persons. It does not attainment or circumstances in the same position. The varying needs of different classes of persons often require separate treatment. From the very nature of society there should be different laws in different places and the legitimate controls the policy and enacts laws in the best interest of the safety and security of the state. In fact, identical treatment in unequal circumstances would amount to inequality. So, a reasonable classification is only not permitted but is necessary if society is to progress.

Thus, what Article 14 forbids is class-legislation but it does not forbid reasonable classification. The classification however must not be "arbitrary, artificial or evasive" but must be based on some real and substantial bearing a just and reasonable relation to the object sought to be achieved by the legislation. Article

14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted that between whom and the persons not so favored no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

Test Of Reasonable Classification: While Article 14 forbids class legislation it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfill the following two conditions.

Firstly, the classification must be founded on the intelligible differentia which distinguishes persons or thing that are grouped together from others left out of the group.

Secondly the differentia must have a rational relation to the object sought to be achieved by the act. The differentia which is the basis of the classification and the object of the act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the act which makes the classification. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory. Thus, the legislature may fix the age at which persons shall be deemed competent to contract between themselves but no one will claim that competency. No contract can be made to depend upon the stature or colour of the hair. Such a classification will be arbitrary.

The true meaning and scope of Article 14 have been explained in a number of cases by the supreme court. In view of this the propositions laid down in ***Dalmia case, AIR 1958 SC 538*** *still hold good governing a valid classification and are as follows*.

1.A law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by itself

2. There is always presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles.

3.The presumption may be rebutted in certain cases by showing that on the fact of the statue, there is no classification and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

4. It must be assumed that Legislature correctly understand and appreciates the need of its own people that its law is directed to problem made manifest by experience and that its discrimination is based on adequate grounds.

5. In order to sustain the presumption of constitutionality the court may take into consideration maters of common knowledge, matters of report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation.

6. Thus the legislation is free to recognize degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest.

7. While good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonable be regarded as based, the presumption of constitutionality cannot be

carried to extent always that there must be some undisclosed and unknown reason for subjecting certain individuals or corporation to be hostile or discriminating legislation.

8.The classification may be made on different bases e.g. geographical or according to object or occupation or the like.

9. The classification made by the legislature need not be scientifically perfect or logically complete. Mathematical nicety and perfect equality are not required. Equality before the law does not require mathematical equality of all persons in all circumstances. Equal treatment does not mean identical treatment. Similarly, not identity of treatment is enough.

10. There can be discrimination both in the substantive as well as the procedural law. Article 14 applies to both. If the classification satisfies the test laid down in the above propositions, the law will be declared constitutional. The question whether a classification is reasonable and proper and not must however, be judged more on commonsense than on legal subtitles.

***Ø D.S. Nakara v. Union of India, AIR 1983 SC 130*:** The Government issued an office memorandum announcing a liberalized pension scheme for retired government servants but made it applicable to those who had retired after 31 March 1979. The supreme court held that the fixing of the cutoff date to be discriminatory as violating Article 14. The division of pensioners into two classes on the basis of the date of retirement was not based on any rational principle because a difference of two days in the matter of retirement could have a traumatic effect on the pensioner. Such a classification held to be arbitrary and unprincipled as there was no acceptable or persuasive reason in its favour. The said classification had no rational nexus with the object sought to achieved.

***Ø Madhu Limaye v. Superintendent. Tihar Jail Delhi, AIR 1975 SC 1505*:** There were Indian and European Prisoners. Both were treated differently. European gets better diet. Court held that difference between Indian and European prisoners in the matter of treatment and diet violates right to equality under Article 14 of Indian prisoners. They all are prisoners they must treat equally.

***Ø Sanaboina Satyanarayan v. Govt. of A.P*:** In Andhra Pradesh. They formulate a scheme for prevention of crime against women. In prisons also prisoners were classified in to two category first Prisoners guilty of crime against women and second prisoners who are not guilty of crime against women. Prisoners who are guilty of crime against women challenge the court saying that there right to equality is deprived. Court held that there is reasonable classification to achieve some objective.

Ø Tamil Nadu Electricity Board v R. Veeraswamy, 1999 (2) SCR 221: The employee was governed by the contributory provident fund scheme. With effect from 1-7-1986 a scheme was introduced. The question was whether the pension scheme ought to be applied to those who had already retired before the introduction of the pension scheme the supreme court rejected the claim. As per the rules prevalent at the time the retirees had received all their retiral benefits. If the pension scheme was made applicable to all past retirees, the resulting financial burden would be Rs. 200 crore which would be beyond the capacity of employer. The reason given for introducing the scheme was financial constraint- a valid ground. The court held that retired employees and those who were in employment on 1-7-1986 can't be treated alike as they do not belong to one class. The workmen who had retired and received all the benefits under the contributory provident fund scheme cease to be employees of the appellant board w.e.f. the date of their retirement. They form a separate class. Thus, there was no illegality in introducing the pension scheme and not making it applicable retrospectively to those who had retired before the date.

Conclusion: What article 14 forbids is discrimination by law that is treating persons similarly circumstanced differently and treating those not similarly circumstanced in the same way or as has been pithily put treating equals as unequal and unequal as equals. Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation. A legislature for the purpose of dealing with the complex problem that arise

out of an infinite variety of human relations cannot but proceed on some sort of selection or classification of persons upon whom the legislation is to operate. It is well settled that Article 14 forbid classification for the purpose of legislation. It is equally well settled that in order to meet the test of Article 1.
(i) classification must be based on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of group and (ii) the differentia must have a rational nexus to the objects sought to be achieved by the executive or legislative action under challenge.

Article 14 contains a guarantee of equality before law to all persons and protection to them against discrimination by law. It forbids class legislation.

(I) Right to compensation for wrongful arrest, detention and torture.
It is solemn duty of the court to protect and uphold the basic human rights of the weaker section of the society. Arrest can be made on not only in Criminal cases but also in Civil cases. In order to bring arrestee before a Court of Law or otherwise secure of the administration of the law, an arrest will usually be made. Arrest notifies a person who has been accused of a crime and can deter and admonish such persons from committing some more other crimes. It is already discussed by me in my previous Article titled '' Guidelines on arrest of women and Judicial Officers'', that Chapter V of Criminal Procedure Code,1973 deals with ''Arrest of persons''. To know about guidelines to be followed before arrest, it is essential to refer the ruling Joginder Kumar vs State of Utter Pradesh. To know more as to guidelines during arrest, it is necessary to refer the decision ***D.K.Basu vs State of West Bengal***. Further, to know about guidelines after arrest, it is essential to refer the ruling ***Sunil Batra vs Delhi Administration, Prem Shankar Shukla vs Delhi Administration*** and D.K.Basu's case. A fortiori, it is also necessary to see Article 20(3) of Indian Constitution, the provisions of Criminal Procedure Code,1973 relating to arrest, Article 7 of International Covenant on Civil and Political Rights,1966 and National Human Rights Commission guidelines on arrest and National Police Commission: Third report etc.

Meaning of Arrest: The word '' ARREST'' is not defined in Code of Criminal Procedure,1973. But, Section 46 of Cr.P.C explains '' Arrest how made''. Under this section, a police officer is given power to use all means necessary to effect the arrest in case of such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest. If we refer a legal dictionary, it conveys the meaning that ''to deprive one of his liberty by virtue of legal authority.'' It gives another meaning: '' to stop''; and also conveys meaning: '' to seize''. Thus, it is known that arrest means'' A seizure or forcible restraint; an exercise of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge''. However, if we go through the rulings given in this article, the meaning of arrest can succinctly be understood.

False Arrest: ''A tort (a civil wrong) that consists of an unlawful restraint of an individual's personal liberty or freedom of movement by another purporting to act according to the law.'' An action can be instituted for the damages ensuing from false arrest, such as loss of salary while imprisoned, or injury to reputation that results in a pecuniary loss to the victim. Ill will and malice are not elements of the tort, but if these factors are proven, Punitive Damages can be awarded in addition to Compensatory Damages or nominal damages. In view of this, it is clearly known that if illegal arrest is made, punitive damages in addition to compensatory or nominal damages can be awarded. In this context, it is very essential to go through the following case-law to know the consequences of illegal arrest.

Related Case-Law: In ***Boya Nallabothula Venkateswarlu and Ors Vs. The Circle Inspector of Police, Nandikotkur PS and Ors (2010 (3) U.P.L.J 19 (HC))***, the Hon'ble Andhra Pradesh High Court Held. ''Despite having sufficient material to reach a finding that the arrest and detention caused by the police are illegal, if we direct further enquiry to be made into the allegations leveled against the investigation agency, it is nothing but diluting the issue and it may also afford an opportunity to the police to harass the witnesses to speak on their behalf. Therefore, we think it just and proper to record a finding since the material available on record in the facts and circumstances of the case, enables us to record a finding that the investigation conducted by the

police is false to their own knowledge and that the arrest and detention of the appellants caused by the police are illegal.''

In ***Boya Nallabothula Venkateswarlu and Ors' case (Cited supra), 2010 (3) U.P.L.J 19 (HC)***, the appellants were deliberately and purposely implicated in a grave charge of murder. Therefore, in this case, the Hon'ble Division Bench of A.P. High Court directed the State to pay compensation at the rate of Rs 1,000/- per day to each of the appellants for causing their illegal arrest and wrongful detention for a period of 32 days. And held that the compensation shall be in addition to the compensation for which the appellants are entitled under private law remedy. It is also directed to recover the compensation paid, from the police personnel who are responsible for illegal arrest and wrongful detention of the appellants. It is further directed to the State to pay an amount of Rs.9,000/- to the appellants towards expenses defrayed by them in prosecuting the writ petition and the writ appeal.

In ***Joginder Kumar Vs State of U.P And Others***, the Hon'ble Supreme Court of India held that '' the arrest should not be merely on suspicion about the person's complicity in the crime and the police officer must be satisfied about necessity and justification of such arrest on the basis of some investigation and the reasons for arrest must be recorded by the police officer in his diary and the arrest should normally be avoided except in cases of heinous crime.''

In ***Bhim Singh, MLA Vs State of J&K And others***, the Hon'ble Supreme Court held that '' the police officers should have greatest regard for personal liberty of citizens, their mala fide, high handed and authoritarian conduct in depriving the personal liberty of person has to be strongly condemned.'' In this case, the Hon'ble Supreme Court directed the Respondent no.1, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs 50,000/- within two months.

In ***Lucknow Development Authority Vs M.K.Gupta*** , it was held that '' when public servant by mala fide, oppressive and capricious acts in performance of official duty causes, injustice, harassment and agony to common man and renders the State or its instrumentality liable to pay damages to the person aggrieved from public fund, State or its instrumentality is duty bound to later recover the amount of compensation so paid from the public servant concerned.''

In ***Sanganagouda A. Veeranagouda and others vs State of Karnataka***, in this case, 'one ''V'' was arrested in a murder case on the direction of Office-in-charge of the police station and subsequently died by hanging himself in the police station, the Hon'ble Supreme Court considering the undisputed facts viz that at the relevant time A.1 was in charge of the police station, A2 to A5 were working as police constables in the said police station, the injuries sustained by the deceased Guddappa to his death was caused in the said police station, the fact that the IO did not produce ''V'' before the nearest Magistrate within 24 hours by his arrest as required under Code of Criminal Procedure, held that the death of the deceased has since occurred beyond 24 hours it would amount to wrongful confinement as contemplated under Section 348 of IPC and accordingly upheld the order passed by the Hon'ble High Court.''

In ***Hindustan Transmission Products Ltd Vs. State of Kerala***,, a petition filed under Article 32 of the Constitution of India for issuance of a writ of Hebeas Corpus to produce two persons, the Hon'ble Supreme Court directed the Hon'ble District Judge, Ludhiana to conduct an enquiry into the allegations made in the affidavit and counter affidavits and submit a report as to the veracity of the statements made by either of the parties particularly in relation to the illegal detention of the aforementioned two persons. Thereafter on receiving the report of the District Judge, the Hon'ble Apex Court held that the two persons were wrongfully deprived of their right to personal liberty by the police authorities of the State of Punjab during the period from 09-08-1993 to 02-10-1993 and directed the State of Punjab to pay each of them a sum of Rs 10,000/- by way of compensation within a period of one month. The Hon'ble Supreme Court furthe made it clear that the payment of this amount by way of compensation would not preclude Dalit Saini and Omprakash from pursuing the remedy, civil as well as criminal, that is available to them in law in respect of their wrongful confinement during this period.

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Conclusion: A fortiori, it is apt to reminisce that'' procedure in Article 21 means fair, not formal procedure. Law is reasonable law, not any enacted piece. As Art. 22 specifically spells out the procedural safeguards for preventive and punitive detention, a law providing for such detention should conform to Art. 22.'' Let me conclude this article with a hope that no person shall not deliberately and purposely be implicated in any crime.

(m) Right to life and personal liberty

Article 21 of the Constitution of India, a very familiar fundamental right, applicable to all persons under Part III of the Constitution of India. Meaning of term "life" is defined in ***Munn v. Illinois,* 94 US 11**, Field**, J.** spoke of the right to life in the following words: *"By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with outer world."*

This article applies to even non-citizen of India. The Supreme Court has emphasized that even those who come to India as tourists also – *"have right to live, so long as they are here, with human dignity, just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizen."* ***(Chairman, Railway Board v. Chandrima Das, AIR 2000 SC 988)***

ARTICLE 21: PROTECTS LIFE AND PERSONAL LIBERTY

'Everyone has the right to life, liberty and the security of person.' The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it. There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense. This Section will examine the right to life as interpreted and applied by the Supreme Court of India.

Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation. Under the canopy of Article 21 so many rights have found shelter, growth and nourishment. Thus, the bare necessities, minimum and basic requirements that is essential and unavoidable for a person is the core concept of right to life.

In the case of ***Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295***, the Supreme Court quoted and held that: By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an armour leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

In ***Sunil Batra v. Delhi Administration, AIR 1978 SC 1675*** the Supreme Court reiterated with the approval the above observations and held that the "right to life" included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person's tradition, culture, heritage and all that gives meaning to a man's life. It includes the right to live in peace, to sleep in peace and the right to repose and health.

Right to Live with Human Dignity

In ***Maneka Gandhi v. Union of India,1978 AIR 597, 1978 SCR (2) 621*** the Supreme Court gave a new dimension to Art. 21 and held that the right to live the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in ***Francis Coralie v. Union Territory of Delhi,1981 AIR 746,*** observed that: *"The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self."*

Another broad formulation of the theme of life to dignity is to be found in ***Bandhua Mukti Morcha v. Union of India, 1984 SCR (2) 67*****.** Characterizing Art. 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed:

"It is the fundamental right of everyone in this country… to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials."

Following the above stated cases, the Supreme Court in ***Peoples Union for Democratic Rights v. Union of India, 1983 SCR (1) 456*****,** held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violative of Article 21 of the Constitution. Bhagwati J. held that, rights and benefits conferred on workmen employed by a contractor under various labour laws are clearly intended to ensure basic human dignity to workmen. He held that the non-implementation by the private contractors engaged for constructing building for holding Asian Games in Delhi, and non-enforcement of these laws by the State Authorities of the provisions of these laws was held to be violative of fundamental right of workers to live with human dignity contained in Art. 21.

In ***Chandra Raja Kumar v. Police Commissioner Hyderabad, IR 1998 AP 302*****,**it has been held that the right to life includes right to life with human dignity and decency and, therefore, holding of beauty contest is repugnant to dignity or decency of women and offends Article 21 of the Constitution only if the same is grossly indecent, scurrilous, obscene or intended for blackmailing. The government is empowered to prohibit the contest as objectionable performance under Section 3 of the Andhra Pradesh Objectionable Performances Prohibition Act, 1956.

In ***State of Maharashtra v. Chandrabhan, 1983 SCR (3) 327*****,** the Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistence allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violative of Article 21 of the Constitution

RIGHT TO LIFE EXTENDS TO LIVELIHOOD

In 1960, the Apex Court was of the view that Article 21 of Indian Constitution does not guarantee right to livelihood.

In ***Sant Ram,*** **AIR 1960 SC 932** a case which arose before Maneka Gandhi, the Supreme Court ruled that the right to livelihood would not fall within the expression "life" in Article 21. The Court said curtly:

"The argument that the word "life" in Article 21 of the Constitution includes "livelihood" has only to be rejected. The question of livelihood has not in terms been dealt with by Article 21."

***Olga Tellis v. Bombay Municipal Corporation,* AIR 1986 SC 180** is case was brought by pavement dwellers to resist eviction of their habitat by the Bombay Municipal Corporation, that the right to livelihood is born out of the right to life, as no person can live without the means of living, that is, the means of livelihood. The Court has observed in this connection:

"….the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean, merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life an equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood."

If the right to livelihood is not treated as a part and parcel of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

Personal Liberty

In India the concept of 'liberty' has received a far more expansive interpretation. The Supreme Court of India has rejected the view that liberty denotes merely freedom from bodily restraint; and has held that it encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men. The meaning of the term 'personal liberty' was considered by the Supreme Court in the Kharak Singh's case, which arose out of the challenge to Constitutional validity of the U. P. Police Regulations that provided for surveillance by way of domiciliary visits and secret picketing. Oddly enough both the majority and minority on the bench relied on the meaning given to the term "personal liberty" by an American judgment (per Field, J.,) in Munn v Illinois, which held the term 'life' meant something more than mere animal existence. The prohibition against its deprivation extended to all those limits and faculties by which the life was enjoyed. This provision equally prohibited the mutilation of the body or the amputation of an arm or leg or the putting of an eye or the destruction of any other organ of the body through which the soul communicated with the outer world. The majority held that the U. P. Police Regulations authorizing domiciliary visits [at night by police officers as a form of surveillance, constituted a deprivation of liberty and thus] unconstitutional. The Court observed that the right to personal liberty in the Indian Constitution is the right of an individual to be free from restrictions or encroachments on his person, whether they are directly imposed or indirectly brought about by calculated measures.

The Supreme Court has held that even lawful imprisonment does not spell farewell to all fundamental rights. A prisoner retains all the rights enjoyed by a free citizen except only those 'necessarily' lost as an incident of imprisonment

CONCLUSION: Deprivation of livelihood would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet such deprivation of life would not be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life.

Right to work has not yet been recognised as a Fundamental Right. In ***Secretary, State of Karnataka v. Umadevi (3),* AIR 2006 SC 1806** the argument of infringement on an expansive interpretation of Article 21 i.e., the right of employment was not accepted by the Supreme Court and the reason for that was amongst others, that the employees accepted the employment on their own violation and with eyes open as to the nature their employment. The Court also rejected the argument that the right to life under Article 21 would include the right of employment at the present point of time.

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(n) Right to Religious Freedom

The Constitution uses but does not define the expressions 'religion' and 'religious denomination' and therefore the courts have found it necessary to explain the meaning and connotation of these words. The Supreme Court has observed that: In the background of the provisions of the Constitution and the light shed by judicial precedent we may say that religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience, i.e., the spirit of man. It must be capable of expression in word and deed, such as worship or ritual - **SP *Mittal v Union of India* AIR 1983 SC 1.**

Right to Religious Freedom: *Individual's Rights*

Religious freedom as an individual's right is guaranteed by the Constitution to 'all persons' within the following parameters:

1. All persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion - **Article 25(1).**

2. There shall be freedom as to payment of taxes for promotion of any particular religion by virtue of which no person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religious denomination - **Article 27.**

3. No religious instruction is to be provided in the schools wholly maintained by State funding; and those attending any State recognized or State-aided school cannot be required to take part in any religious instruction or services without their (or if they are minor their guardian's) consent - **Article 28.**

Group Rights: Freedom of religion is guaranteed by the Constitution of India as a group right in the following ways:

1. Every religious denomination or any section thereof has the right to manage its religious affairs; establish and maintain institutions for religious and charitable purposes; and own, acquire and administer properties of all kinds - **Article 26.**

2. Any section of the citizens having a distinct language, script or culture of its own shall have the right to conserve the same - **Article 29**.

3. Religious and linguistic minorities are free to establish and administer educational institutions of their choice, which shall not be discriminated against by the State in the matter of giving aid or compensation in the event of acquisition - **Article 30.**

Interpreting the constitutional provisions relating to freedom of religion the Supreme Court has observed: The right to religion guaranteed under Articles 25 & 26 is not an absolute or unfettered right; they are subject to reform on social welfare by appropriate legislation by the state. The Court therefore while interpreting Article 25 and 26 strikes a careful balance between matters which are essential and integral part and those which are not and the need for the State to regulate or control in the interests of the community — ***AS Narayana Deeshitalyu v State of Andhrn Pradesh (1996) 9 SCC 548*.**

Restriction: The right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right; they are subject to reform on social welfare by appropriate legislation by the State. The Court therefore while interpreting Article. There have been numerous other rulings explaining the scope and connotation of the religious liberty provisions in the Constitution. Given below is a summary of the major rulings:

a. Articles 25-30 embody the principles of religious tolerance that has been the characteristic feature of Indian civilization from the start of history. They serve to emphasize the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution - ***Sardar Suedna Taiiir Saifiiddin v State of Bombay AIR 1962, SC 853***.

b. Freedom of conscience connotes a person's right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual well-being - ***Ratilal Panachand Gandhi v State of Bombay AIR 1954 SC, 388*.**

c. To profess a religion means the right to declare freely and openly one's faith - ***Punjab Rao v DP Meshram AIR 1965 SC 1179*.**

d. Religious practices or performances of acts in pursuance of religious beliefs are as much a part of religion as faith or belief in particular doctrines - ***Ratilal Panachand Gandhi v State of Bombay* AIR 1954 SC 388.**

e. What constitutes an integral or essential part of a religion or religious practice is to be decided by the courts with reference to the doctrine of a particular religion and includes practices regarded by the community as parts of its religion **- *Seshammal v State of Tamil Nadu* AIR 1972 SC 1586.**

f. The right to profess, practice and propagate religion does not extend to the right of worship at any or every place of worship so that any hindrance to worship at a particular place per se will infringe religious freedom - ***Ismail Paruqi v Union of India (1994) 6 SCC 360*.**

g. Under Article 25 to 'propagate' religion means 'to propagate or disseminate his ideas for the edification of others' and for the purpose of this right it is immaterial 'whether propagation takes place in a church or monastery or in a temple or parlour meeting' - ***Commissioner, Hindu Religious Endowments, Madras v Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282***.

h. To claim to be a religious denomination a group has to satisfy three conditions: common faith, common organization and designation by a distinctive name - ***SK Mittal v Union of India AIR 1983 SC 1***.

i. The expression 'matters of religion' in Article 26 extends to acts done in pursuance of religion and covers rituals, observances, ceremonies and modes of worship - ***Jagannath Ramanuj Das v State of Orissa AIR 1954 SC 400; Dargah Committee v Husain AH AIR 1961 SC 1402***.

j. A religious denomination has the right to lay down the rites and ceremonies to be performed by its members - ***Ramanuj v Tamil Nadu State AIR 1972 SC 1586.***

k. A 'common burden' (e.g., land revenue) which is imposed on all does not violate the right of a religious denomination - ***Govt. of Tamil Nadu v Ahobila* AIR 1987 SC 245.**

l. Property of a religious denomination violating the agrarian reform and land ceiling laws can be lawfully acquired by the State - ***Narendra v State of Gujarat AIR 1974 SC 2098.***

m. A law which takes away the right of administration from a denomination and vests it in a secular body would infringe upon the Constitution - ***Ratilal Panachand Gandhi v State of Bombay AIR 1954 SC 388.***

n. Since the State is secular and freedom of religion is guaranteed both to individuals and groups, it is against the constitutional policy to pay out of public funds any money for the promotion or maintenance of a particular religion - ***Commissioner, Hindu Religious Endowments v LT Swamiar* AIR 1954 SC 282**.

<u>Educational Rights of Minorities</u>

The educational rights of minorities under Article 30 of the Constitution have from the earliest period of the post-Constitution era been the subject of a large number of judicial decisions of all kinds and implications. In a 1958 case the Supreme Court had assertively said that: Our Constitution has guaranteed certain cherished rights of minorities concerning their language, culture and religion. So long as the Constitution stands as in is and is not altered, it is, we conceive, the duty of this court to uphold the fundamental rights and thereby tumour

our sacred obligation to the minority communities who are of our own....The right guaranteed under Article 30 (1) is a right that is absolute and any law or executive direction which infringes the substance of that right is void to the extent of infringement - *in re* ***Kerala Education Bill*** **AIR 1958 SC 956**.

In a later ruling of 1974, the courts observed: These provisions enshrined a befitting pledge to the minorities in the Constitution of the country whose greatest son had laid down his life for the protection of the minorities. As long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith; it would be constitutionally impermissible - ***St Xavier's College v State of Gujarat*** **AIR 1974 SC 1389.**

Some scholars have expressed an opinion that the scope of Article 30 of the Constitution is to be limited to the purposes mentioned in Article 29 and, therefore, minorities should be allowed to establish educational institutions of llu'ir choice only for the protection of their distinct languages, scripts and cultures. This opinion has never been accepted by the superior courts. **In *St Stephen's College v University of Delhi* (1992) 1 SCC 558 the**

Supreme Court decided that minority intake in minority institutions should in the interest of national integration be limited to 50%. There is no law or judicial decision to ensure a reasonable presence of children from the minority communities in the educational institutions established and run by the majority community (e.g., the chain of DAY, Sana tan Dharma and Hindu Colleges).

From 1997 onwards large Supreme Court Benches have looked into various aspects of the provision of Article 30, generally restricting its scope — ***TMA Pai foundation v State of Karnataka*** **(2002) 8 SCC 481;** ***Islamic Academy of Education v State of Karnataka*** **(2003) 6 SCC 697;** ***PA Inamdar v State of Maharashtra*** **AIR 2005 SC 3226.**